





THE LAW, PRIVILEGES, PROCEEDINGS  
AND USAGE OF PARLIAMENT



*“Lex et consuetudo parlamenti . . .  
ab omnibus . . . quaerenda, a multis  
ignorata, a paucis cognita.”*

A TREATISE ON  
THE LAW, PRIVILEGES  
PROCEEDINGS AND  
USAGE OF PARLIAMENT

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FOURTEENTH EDITION

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*To*  
COLONEL THE RIGHT HONOURABLE  
DOUGLAS CLIFTON BROWN  
SPEAKER OF THE HOUSE OF COMMONS

*In whose hands  
the high tradition of the Chair  
safely rests.*

# PREFACE

## TO THE FOURTEENTH EDITION

THE editor of a treatise which has retained its authority unchallenged for over a hundred years cannot fail to be conscious of the duty which he owes to the eminent author, and to the learned editors through whose hands successive editions of the work have previously passed. This duty might have been discharged by retaining as far as possible the arrangement of the work in the shape which it had reached, and inserting only so much new matter as was necessary to bring it up to date. But my real duty, I felt, was to expound a developing system rather than to edit a text, however classical, and I convinced myself that the preservation of their *ipsissima dicta* was not even the truest form of piety to the memory of my predecessors. For the results of a century of rapid political change had so altered the balance of procedure, in particular the relation between the old ground-work of practice and the novel accretion of standing orders (with the practice consequent thereon), that the original statement of the rules had become overweighted with qualifications—to the extent, in some places, that the original text was in danger of becoming a historical introduction to the foot-notes. A time had come when further piecemeal addition would have reduced the value of the book as a work of reference, and the original intentions of the author would be best fulfilled by a radical and comprehensive revision and re-arrangement.

The unusually long interval since the publication of the last edition of this work in 1924 has been due principally to the labour involved in this undertaking, but also in part to the difficulties put in the way of research and publication by six years of war.

The principal changes of form which characterize the present edition may be mentioned briefly. It will be seen that two different sizes of type are employed in the body of the text—a larger type for the principles and major rules of procedure, and a smaller type for minor rules and exceptions, and also for examples of proceedings which illustrate the working of the rules. The marginal notes used in previous editions have been replaced by cross-headings, in the belief that the latter are better suited to rapid reference, and also that through typographical gradations they enable the eye to distinguish at a glance between the main and the subordinate divisions of a chapter. Most of the matter previously contained in the footnotes has been incorporated in the text, and the footnotes themselves reserved almost exclusively for the citation of authorities. The footnotes have been further reduced by the elimination or drastic curtailment of many long lists of references, such as those giving precedents of normal procedure, which can readily be found in the Indexes to the Journals of both Houses, and particularly in the Decennial Index of the Commons Journals, with which no text book, however voluminous, can hope to compete.

Since, in a changing world, the usefulness of a precedent may depend

on its *date*, in citing the Journals, Debates and parliamentary papers of both Houses reference to the date of publication has been substituted for reference to a serial number; and in the course of this laborious task (for which I am indebted to some of my younger colleagues) every reference has been verified and a good many corrected.

Apart from these general changes in form, the material of the book has been re-arranged, the sequence of the chapters has been altered, and many new sections added. This has involved, in effect, the re-writing of the whole work.

As regards the chapters on Private Bills, considerable changes in the text have been necessitated by the complete revision of the standing orders relative to private business in both Houses which took place in 1945. The new form and numbering of the standing orders is reflected in the text so far as description of their provisions and reference to them are concerned; but, since the revised standing orders only came into force in the year when this new edition was going to press, the chapters in question do not reflect any changes in, or instances of, practice consequent on the revision. The instances quoted in the foot-notes, therefore, all belong to the pre-revision stage of the standing orders, of which the last published edition was that of 1942.

In view of the great accumulation of historical information in an accessible form which has taken place since this work was first written, many points of historical detail which were scattered through its pages have been omitted as no longer necessary. But where the historical process has an important constitutional application, or where its results survive in modern parliamentary law and procedure, as in the case of privilege and financial procedure, a summary of the main points in a connected form has been provided.

The extent to which the subject-matter of the book has been re-arranged can be best ascertained by comparing the Table of Contents in this and the previous edition. A new Index has been made and lists of statutes and cases added. It is hoped that a more detailed Table of Contents will, with the Index, afford a double opportunity for the rapid tracing of any item of information required—the former being probably more useful for those who are familiar with the subject, and the latter for the comparatively uninitiated.

During the twelve years over which, in the intervals of official work, the preparation of this edition has been in progress, my own labours have been greatly lightened by the help given by many friends and colleagues. For generous help given from outside I should like to give my grateful thanks to Dr. Helen Cam, of Girton College, Cambridge, on whose advice and authority the section on the origins of Parliament was prepared; and to Sir Geoffrey Hippisley Cox, C.B.E., who placed at my disposal his great experience of private bill practice.

Of my colleagues within the Houses of Parliament I must reluctantly limit my acknowledgments, though not my indebtedness, to those who actually wrote or re-wrote chapters or sections of the work. Sir Henry Badeley, K.C.B., C.B.E., and Mr. F. W. Lascelles, C.B., M.C., supervised and revised most of the sections on House of Lords procedure; Sir Frederick Liddell, K.C.B., K.C., re-wrote the *locus standi* and the

Referec sections ; and Sir Cecil Carr, K.C., contributed the section on delegated legislation, as well as many other paragraphs.

To my own immediate colleagues my debt is great. I should wish to acknowledge each contribution individually. But to do so would involve giving a list of almost all the present and many past members of the Clerk's Department of the House of Commons. I am equally grateful to all, for their help was only limited by the demands which I made upon them. In some cases the demands were particularly heavy. Sir William Gibbons, C.B., till recently Principal Clerk of Public Bills, and his predecessor, Sir Bryan Fell, K.C.M.G., C.B., allowed me throughout the whole period to draw upon their experience and judgment, particularly in connection with public bills and financial practice. Mr. F. W. Metcalfe, C.B., and Mr. E. A. Fellowes, C.B., M.C., gave unstintedly of their knowledge of modern procedure, the former particularly in regard to Questions and the latter in regard to public finance. Mr. O. C. Williams, C.B., M.C., revised the greater part of Book III immediately before publication, in the light of the changes in the code of Private Business Standing Orders in both Houses already referred to. Mr. L. A. Abraham brought to the writing of the chapter on Breaches of Privilege and Contempts an unrivalled legal knowledge of parliamentary privilege, and, in addition, contributed the section on select committees. Mr. S. St. G. S. Kingdom, O.B.E., re-wrote the chapter on Public Bills and the section on standing committees, and assisted Mr. R. A. W. Dent in remodelling the chapters on Private Legislation, while Mr. A. C. Marples contributed the section on electoral procedure.

Finally, I offer specially warm thanks to Mr. R. A. W. Dent, who, during my illness at a critical stage of progress, took over the supervision of the work ; and to Mr. T. G. B. Cocks, who, in addition to contributing the sections on Disqualification and Emergency Procedure, has for the last six years brought fresh energies and a vigorous mind to bear on innumerable problems which I have handed over to him, and who, in co-operation with Mr. K. R. Mackenzie and Mr. S. Gordon, has relieved me of most of the routine work in the stages of revision.

G. F. M. C.

*February, 1946.*

## EXTRACT FROM SIR T. ERSKINE MAY'S PREFACE TO THE FIRST EDITION, 1844

It is the object of the following pages to describe the various functions and proceedings of Parliament, in a form adapted, as well to purposes of reference, as to a methodical treatment of the subject. The well-known work of Mr. Hatsell abounds with Parliamentary learning, and, except where changes have arisen in the practice of later years, is deservedly regarded as an authority upon all the matters of which it treats. Other works have also appeared, upon particular branches of parliamentary practice; or with an incidental rather than direct bearing upon all of them: but no general view of the proceedings of both Houses of Parliament, at the present time, has yet been published; and it is in the hope of supplying some part of this acknowledged deficiency that the present Treatise has been written. . . .

. . . The arrangement of the work has been designed with a view to advance from the more general to the particular and distinct proceedings of Parliament, to avoid repetition, and to prevent any confusion of separate classes of proceedings; and each subject has been treated by itself, so as to present, first, the rules or principles; secondly, the authorities, if any be applicable; and, thirdly, the particular precedents in illustration of the practice.

## EXTRACT FROM SIR REGINALD PALGRAVE'S PREFACE TO THE TENTH EDITION, 1893

The first edition of this book was in preparation exactly fifty years ago, during those halcyon days of parliamentary existence when the standing orders of the House of Commons, now 97 in number, were only 14; . . . and when a motion might be met by any form of amendment, however grotesquely irrelevant. Excluding the standing orders which require the recommendation of the Crown to motions involving a money charge, and which regulate the presentation of petitions, the parliamentary procedure of 1844 was essentially the procedure on which the House of Commons conducted business during the Long Parliament. . . .

. . . As this book is, when caught up from the Table of the House to parry an objection, or to perplex an antagonist, expressly a book for rapid reference, it has been sought, by an ever-recurring insertion of marginal and other references, to make the book an index unto itself . . . An inherent difficulty besets a treatise which deals not only with the historical aspect of an august, many-sided institution, but with the conditions of its daily life. The rules laid down by practice and the standing orders, and the precepts and injunctions delivered from the Chair, act with such interwoven and varied application that their results must appear and reappear in various portions of the text, either as an enforcement, or as a modification of the principle then under consideration.

## EXTRACT FROM SIR T. LONSDALE WEBSTER'S PREFACE TO THE ELEVENTH EDITION, 1906

One of the most salient changes (in the procedure and practice of Parliament) that has taken place since the last edition of this book was issued, is that effected by the alteration in the Rules of Procedure of the House of Commons which were embodied in the standing orders in 1902 . . . Fixed periods of the day have been defined during which alone certain kinds of business . . . can be taken. And the House has conferred by a standing order, upon the government of the day, those facilities for the transaction of business which each government formerly sought by special motions in every session.

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A. C. (preceded by date)	...	...	Law Reports, Appeal Cases, House of Lords, since 1890.
A. & E. }	...	...	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 1831-1842.
Ad. & El. }	...	...	Law and Custom of the Constitution, volume 1, 5th edition, 1922.
Anson	...	...	Law Reports, Appeal Cases, House of Lords, 1875-1890.
App. Cas.	...	...	Bidder's Locus Standi Reports, 1920—(current).
B.	...	...	Barnewall and Alderson's Reports, King's Bench, 1817-1822.
B. & Ald.	...	...	Barnewall and Cresswell's Reports, King's Bench, 1822-1830.
B. & C.	...	...	Bacon's Abridgment.
Bac. Abr.	...	...	Barron and Austin's Election Cases, 1842.
Bar. & Aust.	...	...	Blackstone's Commentaries.
Bl. Com.	...	...	J. Brown's Cases in Parliament, 1702-1800.
Bro. Parl. Cas.	...	...	Bulstrode's Reports, King's Bench, folio, 3 parts in 1 volume, 1610-1626.
Bulst.	...	...	The Ecclesiastical Law, by Richard Burn, 9th edition, 4 volumes, 1842.
Burn, Eccl. Law	...	...	Bishop Burnet's History of his own Time, 6 volumes, 2nd edition enlarged, 1833.
Burnet	...	...	Burrow's Reports, King's Bench, 1756-1772.
Burr.	...	...	Diary of Thomas Burton, esquire, member in the parliaments of Oliver and Richard Cromwell, 4 volumes, 1828.
Burton	...	...	
C.	...	...	Paper presented to Parliament by Royal Command, 1870-1900.
Cd.	...	...	Paper presented to Parliament by Royal Command, 1900-1918.
C. B.	...	...	Common Bench Reports, 1845-1856.
C. J. ( )	...	...	Journals of the House of Commons (followed by sessional year or years).
Campbell, Ch. Just	...	...	Lives of the Chief Justices of England, by John Lord Campbell, 3 volumes, 1849-1857.
Campbell, Lives	...	...	Lives of the Lord Chancellors and Keepers of the Great Seal of England, by John, Lord Campbell, 8 volumes, 1845-1869.
Car. & Kir.	...	...	Carrington and Kirwan's Reports, Nisi Prius, 1843-1853.
Car. & M.	...	...	Carrington and Marshman's Reports, Nisi Prius, 1841-1843.
Carte	...	...	A General History of England, by Thomas Carte, 4 volumes, 1750.
Carth.	...	...	Carthew's Reports, King's Bench, folio, 1 volume, 1687-1700.
Cav. Deb.	...	...	Sir Henry Cavendish's Debates of the House of Commons, 1768-1774, in 2 volumes, 1841-1842.
Ch. (preceded by date)	...	...	Law Reports, Chancery Division, since 1890.
Ch. App.	...	...	Law Reports, Chancery Appeals, 1865-1875.
Ch. D.	...	...	Law Reports, Chancery Division, 1875-1890.
Chandler, Deb.	...	...	Debates of the House of Commons, by Richard Chandler, 14 volumes, 1670-1743.
Chit.	...	...	Chitty's Practice Reports, King's Bench, 1770-1822.
Cl. & Fin.	...	...	Clark and Finelly's Reports, House of Lords, 1831-1846.
Clarendon	...	...	A History of the Rebellion and Civil Wars in England, by Edward, Earl of Clarendon, Oxford, 1849.
C. & R.	...	...	Clifford and Rickards' Locus Standi Reports, 1873-1884.
Clif. & Rick.	...	...	
C. & S.	...	...	Clifford and Stephens' Locus Standi Reports, 1867-1872.
Clif. & Steph.	...	...	
Clifford	...	...	History of Private Bill Legislation, by Frederick Clifford, 2 volumes, 1887.
Cmd.	...	...	Papers presented to Parliament by Royal Command, 1919—(current).



Co. Inst. . . . .	Institutes of the Laws of England, by Sir Edward Coke.
Colchester . . . . .	Diary and Correspondence of Charles Abbot, Lord Colchester, 3 volumes, 1861.
Co. Litt. . . . .	Commentary upon Littleton by Sir Edward Coke, 19th edition, 1832.
Com. Dig. . . . .	Comyn's Digest.
Constable . . . . .	Treatise on Provisional Orders applicable to Scotland under the Private Legislation Procedure (Scotland) Act, by Constable, Beveridge and Macmillan, 1900.
Co. Rep. . . . .	Reports of Sir Edward Coke, 13 parts, 1572-1616.
Cotton . . . . .	An exact abridgment of the Records in the Tower of London, by Sir Robert Cotton, 1689.
Cowp. . . . .	Cowper's Reports, King's Bench, 1774-1778.
Dasent, Speakers . . . . .	Speakers of the House of Commons, by Arthur Irwin Dasent, 1911.
Decision (serial number)	Decisions from the Chair, compiled by the Clerk of the House of Commons, privately printed.
Denison . . . . .	Notes from my Journal when Speaker of the House of Commons, by the late John Evelyn Denison, 1900.
D'Ewes . . . . .	Journals of all the Parliaments during the reign of Queen Elizabeth, by Sir Simonds d'Ewes, 1682.
Digest . . . . .	English and Empire Digest, 44 volumes, 1200-1929.
Doug. El. Cas. . . . .	Douglas' Election Cases, 1774-1776.
Doug. (K. B.) . . . . .	Douglas' Reports, King's Bench, 1778-1785.
Dow & Ry. (K. B.) . . . . .	Dowling and Ryland's Reports, King's Bench, 1822-1827.
East . . . . .	East's Reports, King's Bench, 1800-1812.
Eldon . . . . .	Life of Lord Chancellor Eldon, by Horace Twiss, 3 volumes, 1844.
Elsynge . . . . .	The Manner of Holding Parliaments in England, by Henry Elsynge, Cler. Parl., 1768.
Esp. . . . .	Espinasse's Reports, Nisi Prius, 1793-1810.
Exch. . . . .	Exchequer Reports (Welsby, Hurlstone, and Gordon), 1847-1856.
Fost. . . . .	Foster's Crown Cases, 1743-1760.
Fox, Memorials . . . . .	Memorials and Correspondence of Charles James Fox, edited by Lord John Russell, 4 volumes, 1853.
Freem . . . . .	Freeman's Reports, Chancery, King's Bench and Common Pleas, 1660-1706.
G. O. . . . .	General Orders under the Private Legislation Procedure (Scotland) Act, 1936.
Gibson, Codex . . . . .	Codex juris eccles. Anglicani by E. Gibson, 2 volumes, 1761.
Gilb. C. P. . . . .	Gilbert's History and Practice of the Court of Common Pleas.
Grey, Deb . . . . .	Debates of the House of Commons from 1667 to 1694, collected by the Honourable Anchitell Grey, 10 volumes 1769.
H. C . . . . .	House of Commons; followed by numeral and date, Parliamentary Paper printed by Order of House, with page and sessional year.
H. C. Deb. . . . .	Parliamentary Debates (Official Report), 5th series, House of Commons, 1909-(current).
H. L. . . . .	House of Lords. If followed by numeral and date, Parliamentary Paper printed by Order of House, with page and sessional year.
H. L. Cas. . . . .	Clark's Reports, House of Lords, 1847-1866.
H. L. Deb. . . . .	Parliamentary Debates (Official Report), 5th series, House of Lords, 1909-(current).
Hakewel . . . . .	Modus tenendi parliamentum or the old manner of holding parliaments in England, by W. Hakewel, 1660.
Hale, C. L. . . . .	History of the Common Law of England, by Sir Matthew Hale, 6th edition, 1820.
Hale, Jurisd. Lords . . . . .	Jurisdiction of the Lords' House of Parliament considered according to ancient records, by Lord Chief Justice Hale, 1796.

Hatsell ... ..	Precedents of Proceedings in the House of Commons, 4 volumes, 1818.
Hawk, P. C. ... ..	Hawkins's Pleas of the Crown, 2 volumes.
Holinshed ... ..	Chronicles of England, Scotland and Ireland, 6 volumes, 1807-1808.
Hughes' Hist. ... ..	History of England from 1750 to 1835, 7 volumes, 1836.
Inst. ... ..	See Co. Inst. (above).
J. P. ... ..	Justice of the Peace, 1837-(current).
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900.
Keb. ... ..	Keble's Reports, folio 1661-1677.
Keny. ... ..	Kenyon's Notes of Cases, King's Bench, 1753-1759.
L. R. Appeal ... ..	Law Reports, Appeal Cases, 1876-(current).
L. J. ( ) ... ..	Journals of the House of Lords (followed by sessional year or years).
L. J. (CH.) ... ..	Law Journal, Chancery, 1822-(current).
L. J. (EX.) ... ..	Law Journal, Exchequer, 1830-1875.
L. R. C. P. ... ..	Law Reports, Common Pleas, 1865-1875.
L. R. Ir. ... ..	Law Reports (Ireland), Chancery and Common Law, 1877-1893.
L. R. Q. B. ... ..	Law Reports, Queen's Bench, 1865-1875.
L. T. ... ..	Law Times Reports, 1859-(current).
Ld. Raym. ... ..	Lord Raymond's Reports, King's Bench and Common Pleas, 1694-1732.
Lev. ... ..	Levinz's Reports, King's Bench and Common Pleas, 1660-1696.
Lex Parl. ... ..	Lex Parliamentaria or a Treatise of the Law and Custom of Parliaments, 2nd edition (by George Petyt).
Liv. Tract. ... ..	"Liverpool Tractate," edited by Strateman, 1937.
Lut. ... ..	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 volumes, 1682-1704.
M. & S. ... ..	Maule and Selwyn's Reports, King's Bench, 1813-1817.
Macaulay, Hist. ... ..	History of England from the accession of James II., by Thomas Babington Macaulay, 5 volumes, 1849-1861.
Mac. & G. ... ..	Macnaghten and Goslon's Reports, Chancery, 1849-1852.
Macqucen ... ..	Appellate Jurisdiction of the House of Lords and Privy Council, by John Macqucen, 1842.
Maitland, Const. Hist. ... ..	Constitutional History of England, by F. W. Maitland, 1908.
Marsh ... ..	Marshall's Reports, Common Pleas, 1813-1816.
Marvell ... ..	Works of Andrew Marvell, esquire, 3 volumes, 1776.
Mass ... ..	Law Reports of Massachusetts.
May, Const. Hist. ... ..	Constitutional History of England since the accession of George the Third, by Sir Thomas Erskine May, K.C.B., D.C.L., edited and continued to 1911 by Francis Holland, 3 volumes, 1912.
Mod. Rep. ... ..	Modern Reports, 1669-1755.
Moo. } P. C. ... ..	Reports of cases before Judicial Committee of Privy Council,
Moore } ... ..	24 volumes, 1836-1873.
Morr. ... ..	Morrell's Reports, Bankruptcy, 1884-1893.
Off. J. ... ..	Journal of Proceedings upon Applications for Provisional Orders under the Private Legislation Procedure (Scotland) Act, 1899.
O'M. & H. ... ..	O'Malley and Hardcastle's Election Cases, 1869-(current).
Oxford Deb ... ..	Proceedings and Debates of the House of Commons in 1620 and 1621, collected by a member of that House, 2 volumes, Oxford, 1766.
P. A.C. ... ..	Reports of Public Accounts Committee (House of Commons).
P.-D. ... ..	Law Reports, Probate, Divorce, and Admiralty Division, 1875-1890.
P. L. R. ... ..	Private Legislation (Scotland) Reports, by Constable, Macmillan and Beveridge.

P. Wms. . . . .	Peere Williams' Reports, Chancery and King's Bench, 1695-1735.
Palgrave, Engl. Com	Rise and Progress of the English Commonwealth, by Francis Palgrave, 1832.
Parl. Deb. . . . .	Parliamentary Debates (authorized edition), First to Fourth Series, 1803-1908.
Parl. Hist. . . . .	Parliamentary History of England from the earliest period to the year 1803.
Parl. Reg . . . . .	Parliamentary Register, 89 volumes, 1774-1803
Peck. . . . .	Peckwell's Election Cases, 1803-1804.
Perceval . . . . .	Life of the Right Hon. Spencer Perceval, by Spencer Walpole, 2 volumes, 1874.
Pike . . . . .	Constitutional History of the House of Lords, 1894.
Ph. . . . .	Phillips' Reports, Chancery, 1841-1849.
Plumer Ward . . . . .	Memoirs of the Political and Literary Life of Robert Plumer Ward, by the Honourable Edmund Phipps, 2 volumes, 1850.
Pollex . . . . .	Pollexfen's Reports, King's Bench, 1670-1682.
Prynne, Register	Brief Register, Kalendar, and Survey of the Several Kinds, Forms of all Parliamentary Writs, by William Prynne, 1659-1664.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891-1901.
Q. B. D. . . . .	Law Reports, Queen's Bench Division, 1875-1890
Rapin . . . . .	History of England, by Rapin de Thoyres, translated by N. Tindal, 2 volumes, 1733.
Redlich . . . . .	Redlich and Ilbert, Procedure of the House of Commons, 3 volumes, 1908.
Rep. Dignity of Peer	Reports of Lords' Committee on the Dignity of a Peer of the Realm, Parl. Pap. (H. C.), sess. 1826, 1st Report, No. 391; Appendix No. 1, Part I. No. 392; Part II. No. 393; 2nd, 3rd, and 4th Reports, No. 394.
R. & M. } Rick. & M } R. & S } Rick. & S. } Rogers . . . . .	Rickards and Michael's Locus Standi Reports, 1885-1889. Rickards and Saunders' Locus Standi Reports, 1890-1894.
R. P. } Rot. Parl. } Rushworth . . . . .	Rogers on Elections, vol. 1, Registration; vol. 2, Parliamentary Elections and Petitions. Rotuli Parliamentorum, etc., 6 Edward I. to 19 Henry VII
Ry. & Can. Cas	Historical Collections, 1618-1648, 3 volumes.
Rym. Focd. . . . .	Roadway and Canal Cases, 1835-1854.
	Foedera, Thomas Rymer and Robert Sanderson, edition 1745, 10 volumes.
S. C. C. (preceded by date)	Court of Session Cases (Scotland).
S O. . . . .	Standing Orders of each House; when followed by 'No.' indicates Standing Orders relating to Public Business (Lords S.O's. in Roman figures); but when followed immediately by figures, indicates Standing Orders relating to Private Business in each House.
S. R. & O. . . . .	The Statutory Rules and Orders, published by authority.
Salk. . . . .	Salkeld's Reports, King's Bench, 1689-1712.
Saund. . . . .	Saunders' Reports, King's Bench, 1666-1672.
S. & A. } Saund. & A. } S. & B. } Saund. & B. }	Saunders and Austin's Locus Standi Reports, 1895-1904.
Sch. . . . .	Saunders and Bidder's Locus Standi Reports, 1905-1919.
Scobell . . . . .	Schedule (to an Act of Parliament).
Show. . . . .	Memorials of the Manner of passing bills, by Henry Scobel, esquire, Cler. Parl. (in Miscellanea Parliamentaria, 1685).
Sidmouth . . . . .	Showers' Reports, King's Bench, 1678-1695.
	Life and Correspondence of the Rt. Hon. Henry Addington, 1st Viscount Sidmouth, by the Honourable George Pellew, D.D., 3 volumes, 1847.
Smethurst . . . . .	Treatise on Locus Standi, 2nd edition, 1867.
Smith, L. C. . . . .	Smith's Leading Cases.
Stark. . . . .	Starkie's Reports, Nisi Prius, 1814-1823.

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State Papers	..	..	State Papers published under the authority of His Majesty's Commission, King Henry VIII, 11 volumes, 1831-1852.
State Tr.	...	...	State Trials, 1163-1820. New Series, 1820-1858.
Stat. of the Realm	..	..	Statutes of the Realm (Record Commission), 1810 <i>et seq.</i>
Stg. Co. Deb.	...	...	Official Report of Debates of Commons Standing Committees.
Story	...	...	Commentaries on the Constitution of the United States, by Joseph Story, LL.D., 3rd edition, 2 volumes, 1858.
Stra.	...	...	Strange's Reports, 1716-1747.
Sty.	..	..	Style's Reports, King's Bench, folio, 1646-1655.
Sugden	...	..	A treatise of the Law of Property as administered by the House of Lords, by Sir Edward Sugden, 1849.
Suppl. to Votes	...	...	Supplement to the Votes and Proceedings of the House of Commons.
T. L. R.	...	..	The Times Law Reports, 1884-(current).
Taunt.	...	..	Taunton's Reports, Commons Pleas, 1807-1819.
T. R.	..	..	Term Reports (Durnford and East), folio, 1785-1800.
Term Rep.	}	..	History and Proceedings of the House of Lords from the Restoration in 1660 to 1742 (printed for E. Timberland).
Timberland		..	
Todd	...	..	Parliamentary Government in England, by Alpheus Todd, New edition by Spencer Walpole, 1892.
Vent.	...	..	Ventris' Reports, folio, 1668-1691.
W. R.	...	...	Weekly Reporter, 1852-1906
West, Inq.	..	..	An Inquiry into the Manner of creating Peers (by Richard West,) 1719.
Wilkins Concilia	...	...	Concilia Magnae Brit. & Hibern. by D. Wilkins, 4 volumes, 1737.
Wils.	...	..	G. Wilson's Reports, King's Bench and Common Pleas, folio, 1742-1774.



## INTRODUCTION.

### SOURCES AND CONTENT OF PARLIAMENTARY LAW AND PROCEDURE.

A WORK which is primarily intended to state in their most recent form the rules under which Parliamentary business is conducted, and is designed for rapid consultation rather than for leisurely study, must assume in its readers some acquaintance with a wider background, and deal with questions of constitutional law and history only so far as they may be necessary to explain points of procedure which would otherwise be unintelligible. The treatment of the law of Parliament in the first of the three books into which this work is divided shows this necessary limitation clearly. On the origin and constitution of Parliament it summarizes the conclusions of recognised authorities and indicates the sources from which fuller information can be obtained. With regard to the powers of Parliament and of its three component parts—King, Lords and Commons—the treatment is restricted to the existing legal powers as exercised in Parliament itself, and does not extend either to the historical development of those powers or to the conventions and practices by which parliamentary government generally, or the relations between the House of Commons and the electors, are regulated. Such matters are no doubt closely related to parliamentary procedure, and indeed a good case could be made for treating them as the product, historically, of the procedure, especially, of the House of Commons. But their full treatment is unsuited to the scope of this work ; and they form the subject of a number of excellent text-books, to which the reader is referred. On the other hand, the law and development of the privileges of Parliament, and especially of the House of Commons, are explained at some length, certainly not because greater importance is attributed to this subject, but because it forms a branch of law which is really indistinguishable from parliamentary procedure, and because here the rules of the law can only be collected from the history of the cases.

In general, the law of Parliament is treated here on its formal side, and as making part of a continuous whole which comprises both rules of law and rules of procedure. The principal distinction, for practical purposes, between law and procedure is that the former is concerned with the formal relations in Parliament of the King with one or both of the two Houses, or of one House with the other, and with the privileges of either House in relation to the public, whereas procedure is confined to the internal arrangements of either House taken by itself. It results from this that, now, in contrast with the early stages of its growth, any change in the law of Parliament can only be effected by statute, whereas each House is free to change its own procedure by its independent action ; and that for the regulation of procedure recourse is had to statute only

for the purpose of effecting similar changes in both Houses, or of co-ordinating the rules of procedure to changes in the law of Parliament.

#### CONTENT OF PARLIAMENTARY PROCEDURE.

The content of Parliamentary procedure proper can be divided into three groups—the forms of proceeding used in either House, the machinery of direction and delegation established by each, and the rules which govern the working of the forms and machinery. Examples of *forms of proceeding* are : the procedure on bills with its various stages ; the process of debate by motion, question and decision ; and, in the House of Commons, a whole range of proceedings for the control of administration, such as proceedings in supply, questions to Ministers, and motions for the adjournment of the House. "*Machinery*" covers the officers of each House—the Speaker of the House of Commons is so essential a piece of machinery that without him the House has no constitutional existence—and the subordinate bodies or committees of various kinds to which portions of business are delegated ; possibly also the officers or " Whips " of the various parties, without whom the functioning of the modern House of Commons at any rate is inconceivable, should be included. (Whether the Cabinet in one of its aspects is an organ of Parliament might be disputed.) The *rules of procedure*, in their proper sense, are the directions which govern the working of the forms of proceeding and the machinery of each House. For instance, the rule that a public bill may be presented without an order of the House (thus extending the initiative in legislation to every Member) ; the rule that on the second reading the principle of a bill is decided ; the rule that in most of the forms of proceeding devised for the control of administration, such as supply and motions for the adjournment of the House, remedies requiring legislation are excluded from debate ; the rules that in the House itself motions require to be seconded and that no Member can speak more than once ; the rules regulating the powers and duties of the Chair in the conduct of debate and the maintenance of order ; and the rules regulating the powers and proceedings of committees. Reference must also be made to certain parliamentary *conventions* which exist to supplement the rules of procedure, mainly for the purpose of securing fair play between the majority and the minority, and due consideration of the rights of individual Members. Whether these are strictly part of procedure may be doubted, since they are not enforced by the Chair, as the rules are, but by the public opinion of the House. For instance, that notice must be given on the order paper to enable an estimate to be considered in Committee of Supply is a rule which would be enforced by the Chair ; but the much more vital and significant rule that the selection of the particular votes to be discussed rests with the Opposition is not strictly a rule or enforceable by the Chair, but a convention dependent only on the respect which every Government feels for the historical rights and corporate sense of the House. Conventions ought, perhaps, to be regarded as a fourth component of procedure. Anyhow, they need to be known by students of procedure, and attention will be directed to them in their proper places.

Forms of proceeding, machinery, rules of procedure and recognised

conventions—these form the voluminous subject matter of procedure, the statement of which accounts for the great bulk of this work. To state them fully but succinctly is a difficult task. To begin their study is a baffling undertaking without some standard to measure their relative importance, and without some clue to the causes of their origin and development. Some of the rules are obviously of high constitutional importance, for instance, the standing order of the House of Commons that new expenditure requires to be recommended by the King. (a) Others are designed to ensure consideration at different levels of breadth and detail, such as the rules governing the various stages of bills. Others are intended to secure a clear decision, such as the rules of relevancy and the rule that there can only be one question before the House at the same time. Others exist for the sake of regularity and uniformity, in cases where, in Hatsell's words "It is more material that there should be a rule to go by than what that rule is," such as the rule that the "Ayes" divide to the right and the "Noes" to the left. Much learning and loyalty have been lavished in the past in defending and maintaining forms and rules which had little intrinsic value, and have not survived. The true standard for measuring the relative importance of a form or rule is the extent to which it is essential or serviceable to the exercise by each House of its parliamentary functions.

Again, the forms and rules show marks of belonging to very different periods and stages of development. Those which regulate formal communications between the King and Parliament or of one House with the other, or which govern election to the Speakership, bear the mark of a more ceremonious age than our own; they are preserved for their value as symbolizing fundamental constitutional facts in an impressive form. A lesser, though still a high, degree of antiquity is also possessed by many other rules, such as those which regulate the process of debate, and by certain forms of machinery, such as the Committee of the whole House. On the other hand, other rules, such as those which distribute business over the session, or settle the order of items to be taken during a sitting, or curtail exuberance of debate, have a modern and businesslike air. Modern procedure has thus the appearance of several layers belonging to different historical periods superimposed one above the other, with considerable portions of the earliest and deepest layers still showing through to the surface.

This appearance is true; it is a characteristic which adds considerably to the difficulties of the study of procedure in several different ways. Sometimes contributions from all the historical strata are found combined in a single piece of modern practice, as in the financial procedure of the House of Commons, making its application very difficult. When such a problem arises it is necessary to disentangle the contributions of the various periods; and this can only be done by ascertaining the source of authority of each part of the combination. Some ancient practices retain a real value, but in relation to a function other than that for which they were originally devised, such as the practice of appointing the Committee of Supply

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(a) "It has been very properly observed that this order is founded on the principles of the constitution," 2 Hatsell, 359 n.



in response to the King's notification of his needs. Others again retain their value for the original function, but that function itself has acquired a new orientation, as in the case of the speech from the Throne at the commencement of the session and the address in reply from the Commons. Essential, therefore, to the appreciation of modern procedure is not only the correct assignment of the forms and rules to the functions to which they are related, but also knowledge of the development of the functions of Parliament and of the corresponding development of forms and rules of procedure.

### · WRITTEN AND UNWRITTEN PROCEDURE

On its smaller scale, the study of English parliamentary procedure presents the same difficulty as the study of English law in that its rules are not covered by any comprehensive and authoritative code. It is true that in both Houses one portion of procedure—private business, which is concerned with local and personal legislation—is, like some parts of the general law, codified, or nearly so. But for the much more important procedure in public business there is, so far as the House of Commons is concerned, no code, not even a partial code; the greater part of its rules are unwritten, to be collected from the Journals or reports of debates, or to be ascertained from personal experience. The written part is merely a pendant to the unwritten part. It consists of "standing orders," laid down by the authority of the House, and published as frequently as amendments require in a single volume containing two parts, the first relating to Public Business, and the second to Private Business.

In the case of the House of Lords written procedure forms a greater part of the whole than in the Commons, and, as will be explained directly, stands in a somewhat different relation to unwritten procedure. The Lords' standing orders are published in separate volumes, relating to Public Business and Local and Personal Bills, respectively.

While, as just stated, the private business standing orders of both Houses form more or less a code, in the House of Commons the public business standing orders are merely modifications of the unwritten rules of procedure, which they everywhere presuppose. For instance there is a Standing Order, No. 33, which reads:—

"If on an amendment to the question that a bill be now read a second time or the third time it is decided that the word 'now' or any words proposed to be left out stand part of the question, Mr. Speaker shall forthwith declare the bill to be read a second or the third time as the case may be."

But the rules which this standing order presupposes and, in one particular, modifies—the rules that bills are read three times, that certain kinds of amendments can be moved to the second or third reading, and that the questions for the reading and the amendment are, but for the standing order, separate questions to be separately decided—these rules are not laid down by standing order but form part of the practice of the House. "Practice" (it should be mentioned here), which is, in legal terminology, the equivalent of "procedure," is regularly used in the House of Commons as a convenient term to denote a part only of procedure—the unwritten part which is not prescribed by standing orders. It has often been pointed

out that the relation of practice to the standing orders of the House of Commons is analogous to the relation between the common law and statute law. The Lords' Standing Orders bear a different relation to practice. Many, dating from the seventeenth or eighteenth centuries, are declaratory of practice, for instance those relating to the privileges of Peers and Lords of Parliament which form about a quarter of the whole. Some modify practice, but very few for the purpose, which is the common characteristic of House of Commons' Standing Orders, of accelerating business. Of the whole range of procedure, including both practice and the standing orders, there is no full statement published on the authority of either House; although, for the House of Lords, a statement of practice is contained in "The Companion to the Standing Orders" compiled by the officers of that House, and, for the House of Commons, a summary of procedure called "The Manual of Procedure in the Public Business" is compiled for the use of Members in a periodically revised form, and laid upon the table of the House by Mr. Speaker.

#### THE KINDS OF AUTHORITY ON WHICH THE RULES OF PROCEDURE ARE BASED.

The several distinct sources from which the existing forms and rules of procedure are drawn are, stated in order of importance, (1) practice, (2) the standing orders and occasional orders and resolutions of either House, (3) rulings from the Chair, and (4) (rarely) statute.

(1) **Practice.**—Practice is that part of procedure which developed spontaneously in the course of the transaction of business in the House of Commons. The authority for many of the old-established forms and rules of practice is unrecorded. Some of them were no doubt invented in Parliament itself, but others have been traced to analogies in the mediæval courts of law and in the councils of the Church. This older practice is sometimes distinguished as "ancient usage," and needs no other authority than proof of its *de facto* existence. It may be defined as the usual and regular method of proceeding not (so far as is known) instituted by express authority, but which is recorded as being already in operation in the volumes of the early Journals. The readings of bills and the use of select committees are examples of ancient usage. But there is also a deliberately authorised practice. Some of the rules of practice were laid down by the House in the form of orders or resolutions, recorded in the Journals, mainly during the seventeenth century. Of these, some purport to lay down new rules or invent new forms or machinery, such as the Committee of the whole House. But most of them are declaratory in form, and made with the evident intention of giving an authoritative exposition of already existing practice rather than of making new practice. Practice was developed by precedents, which were established in much the same way and are still treated with similar respect in Parliament, as judicial precedents in the courts. When a case occurred which could not be decided on any existing rule, the House appointed a committee to "search the Journals for precedents of what hath been done in like cases," or ordered proceedings from the Journals in analogous cases to be read at the table; and, after a careful consideration of the precedents thus collected, the case was settled, to become

itself a precedent for future occasions. Or, if the circumstances of the case were too peculiar, an entry was made in the Journals that it should not be drawn into a precedent. The great period of practice was in the first half of the seventeenth century; although it looked back to an imaginary golden age in the fifteenth century, its spirit was thoroughly practical and took such hold of Parliament that it survived unchanged in the House of Commons till after the Reform Act of 1832, and still forms the groundwork of procedure. Many forms were common to both Houses, and continue unchanged in the procedure of the House of Lords.

The principal common characteristic of the rules of practice was to provide ample opportunity for debate (*b*) and for initiative in choosing subjects for debate, and ample safeguards against business being taken without due notice so that decisions could not be reached without opportunities for full consideration being given.

Manuals and textbooks of the practice of Parliament and particularly of the House of Commons were published in the sixteenth, seventeenth and eighteenth centuries (*c*). But these books were couched in general terms, and in order to understand the details of the old practice, it is necessary to study the Journals of the two Houses and any records of debates which were published before the institution of the series of Hansard's Reports, or which have been preserved in manuscript.

The methods by which practice was made—the formation of precedents, the recording of decisions by the House in individual cases—are still in full operation, and have been supplemented by a new and fertile method, which was hardly operative before the period of the standing orders (in which the judicial position of the Speaker has been greatly enhanced) namely the giving of rulings by the Speaker and other occupants of the chair. Thus there is a modern as well as an ancient practice—the function of modern practice, besides that of applying, usually in a restrictive sense, the rules of the ancient usage to changing conditions, is to supplement the standing orders, and to harmonize them with each other and with the general body of practice. A field in which there have been many opportunities for constructive interpretation in the light of modern conditions is the ancient financial procedure of the House of Commons (see below).

Nevertheless the rules of practice still provide the framework of procedure, for the work of the standing orders has been far less to lay down new rules than to modify existing rules.

(2) **The Standing Orders.**—The second main basis of procedure in the House of Commons is provided by the standing orders, which, as indicated above, have to be read in conjunction with the practice of the

(*b*) Cf. Mr. Balfour's remark in defence of his reforms of 1902: "In the middle of the 18th century and indeed to a very much later period, the difficulty was not to check the flow of oratory, but to induce it to flow at all" (Redlich i, 64).

(*c*) See, e.g.; Smith (Sir T.) *De republica Anglorum* (c. 1560); *anon*, *Privileges and Practices of Parliament*, 1628; Hakewil, *The manner how statutes are enacted in Parliament*, 1641; Lambade, *The orders, proceedings, punishments and privileges of Parliament*, 1641 (*Harleian Misc.*); Scobell, *Memorials of the manner of passing Bills*, 1685; Petyt, *Lex Parliamentaria*, or a treatise of the Law, etc. of the Parliaments of England, 1690; *Liverpool Tractate*, (c. 1763) ed. by Strateman; *Elsynge, Manner of holding parliaments in England*, 1768; Hooker, *The order and usage of the English Parliament* (in Mountmorres, *Princ. trans. of the Irish Parl.* 1634-1666) 1792.

House and do not form a complete code of procedure. All but a very few of the Commons' standing orders have been passed since 1832. Their chief characteristic is that they are intended to expedite the progress of business by reducing the opportunities for debate and checking its luxuriance. The relation between practice and the standing orders in the modern procedure of the House of Commons is further explained below.

Although a standing order differs from every other order of the House in having an express duration beyond the end of the session in which it is passed, no special procedure is, as a rule, involved in its passage, except that after it has been agreed to on motion a further order is made declaring it to be a standing order of the House. Standing orders are not safeguarded by any special procedure against repeal or suspension, whether explicitly or by an order contrary to their purport. Ordinary notice only is requisite for the necessary motion; and some standing orders provide for their own suspension by a bare vote, without amendment or debate.

If it is desired to regulate proceedings in a future session, for instance by providing that a bill shall be proceeded with in the next session at the stage which it has reached in the current session, the order for such a purpose must, to give it the requisite validity, be made a standing order (see p. 957 *n*).

*Orders and Resolutions.*—Sessional orders and resolutions relating to procedure, i.e., those whose duration is expressly or by implication limited to that of the session in which they are made, are usually made for such purposes as to give precedence to specified kinds of business or to subject specified proceedings to specially stringent restrictions, rather than for the regulation of general procedure, except in periods of emergency as during the recent wars.

Certain orders and resolutions (to which the term "sessional" is more particularly appropriated) are renewed regularly on the first day of each session in the House of Commons, and are to all intents and purposes standing orders except that they do not regulate the procedure of the House itself, but in the main prescribe rules for the conduct of persons, who are not Members, in their relation to the House. Another use for sessional orders is to experiment with new rules which are intended to be permanent if they prove satisfactory in working. Thus, what is now S.O. No. 14 had a preliminary period of trial as a sessional order before it became a standing order in the year 1902. This is a cautious method of making innovations which is, for example, being adopted in the present session (1945-46) in the case of standing committees.

Orders and resolutions which affect the procedure of either House are sometimes made without any period of duration being fixed, and in that case they are often regarded as having permanent validity, although according to the custom of Parliament their effectiveness is concluded by prorogation. Many such resolutions, the validity of which is even now recognised, may be found in the Journals of the seventeenth century. These have been referred to already as providing one of the bases of practice; and in a later age they would no doubt have been passed as standing orders. Examples of these are orders of 1604 against speaking

tediously, impertinently and beside the question (*d*), and the resolutions of the same year that a Member may not speak twice to the same question, and that the same question be not proposed again during the same session; the resolution of 1640 that the Speaker cannot take the chair if forty members are not present; and resolutions prohibiting speaking after the voices have been fully taken, and directing the formal reading of a bill at the opening of the session. Even since the beginning of the "Standing order period," examples are to be found of orders and resolutions made by the House of Commons with permanent effect; for example the order of 1836 prohibiting the printing and publication of the evidence of a committee before it has been reported to the House; the resolution of the same session with regard to Parliamentary Agents; and the resolution of 1909 amending the fair wages clauses in Government contracts (*e*).

(3) **Rulings from the Chair.**—The third source of procedure is to be found in rulings from the Chair. Recurring to the previously mentioned analogy with the general law, if ancient usage corresponds to the common law and the standing orders to the statute law, the rulings of the Speaker in the House and the Chairman in Committee of the whole House, afford an obvious parallel to the decisions of judges in the courts. The House of Commons has its own body of case-law. This consists principally of rulings given by Mr. Speaker in answer to questions raising points of order on current business. Such rulings are, as stated above, the principal source of modern *practice*. They are constantly needed for the purpose of applying the standing orders to doubtful or new cases; and for harmonizing the standing orders with older practice and with each other. A field in which there have been many occasions for constructive interpretation and adaptation to modern conditions is provided by the ancient financial procedure of the House, including the "public money" standing orders which date from the early eighteenth century. A study of Chapters XXV to XXVII will show to how great an extent the modern financial practice of the House has been moulded by the Chair. The procedure for obtaining a ruling from the Chair is generally as follows. Notice is given to the Speaker by the Member who desires to raise a point of order; and the opportunity is taken to consult any relevant precedents that there may be, so that the ruling may take account of all the considerations involved. Such a ruling forms a precedent, often fitting into its place in a series of precedents from which a general rule may be eventually drawn which will affect all future practice in a particular range of procedure.

In addition to the formal rulings which he gives after notice, the Speaker is frequently called upon to give decisions on points suddenly arising in the course of business, e.g., on supplementary questions or relevancy in debate. And the Chairman of Ways and Means has similarly to give decisions in Committee of Supply and on amendments to bills in Committee of the whole House. All such decisions are to be found recorded in Hansard's Debates. But sometimes rulings are given

(*d*) 2 Hatsell 230; C.J. (1547-1628) 172, 946.

(*e*) C.J. (1909) 51.

privately on matters before they are brought before the House; and, when such a ruling has the effect of bringing a proposal into order or of excluding it finally as out of order, there is no opportunity for it to be delivered publicly in the House. Both public and private rulings, which contain points of importance, particularly new points, are for the sake of official convenience and dispatch collected at the end of each session and printed from time to time for official use.

(4) **Statutory modification of procedure.**—That part of procedure which derives its authority from statute is comparatively small. With the exception of an early statute for regulating places in the Lords (*f*) and certain statutes affecting the prorogation of Parliament, statutory modification of existing procedure is not found before the nineteenth century. Examples since then are the Act of 1850 (13 & 14 Vict. c. 21), s. 1 of which annulled the rule of practice that a bill could not be introduced at variance with the provisions of an Act passed during the same session; the Private Legislation Procedure (Scotland) Act, 1899; and the Parliament Act, 1911. Two of these Acts prescribed common procedure for both Houses, and the last the procedure consequent upon disagreement between them. Also the Exchequer and Audit Departments Act, 1868, the Public Accounts and Charges Act, 1891, and the Provisional Collection of Taxes Act, 1913, have directly or indirectly affected the financial procedure of the House of Commons; and the Parliamentary Elections Act, 1866, has delegated to the courts the jurisdiction over controverted elections formerly exercised by the House itself.

The four sources of procedure just mentioned are of different degrees of authority. A statute overrides, and cannot be superseded by, an order or regulation of one House or of both jointly. An express order can supersede another such order of the same House; thus a sessional order can set aside, and an *ad hoc* order can suspend, a standing order. Any form of express order takes precedence of a rule of practice. The function of the Chair is declaratory and interpretative. But the Speaker is in a sense a law-giver too; for, by the application of principles and precedents to new circumstances, he creates rules which would not otherwise exist.

#### HISTORICAL RELATION BETWEEN PRACTICE AND THE STANDING ORDERS.

The contrast in spirit between practice and the standing orders may be briefly described. The historical practice of the House of Commons dates from a time when that House regarded itself as in opposition to the Crown and the executive, and the forms and rules of its practice were largely devised to delay and temporise. The Commons were concerned more with grievances and their redress than with the dispatch of the Crown's business. This attitude is indicated in the old parliamentary maxim quoted by Hatsell, "That nothing tended more to throw power into the hands of Administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, these rules—That the forms of proceedings, as instituted by our ancestors,

(*f*) 31 Hen. 8, c. 10. Now largely obsolete, though not repealed. See Standing Orders of the House of Lords, Appendix No. 2.

operated as a check and control on the actions of Ministers ; and that they were, in many instances, a shelter and protection to the minority, against the attempts of power." (g).

Under the modern constitutional system, however, the close and intricate relation between the executive and the House of Commons, as well as a greatly expanded programme of business, demands a far greater degree of co-operation than may formerly have been necessary. This need was met in the 19th century by the passing of standing orders, which restricted the ancient practice to the extent requisite to achieve a considerable annual programme of financial and legislative business, but without impairing the rights of minorities or unduly repressing opportunities for legitimate, as distinct from obstructive, debate. The public business standing orders of the Commons fall into two groups broadly characteristic of the period before and the period after 1880 ; the object of the first group being to limit the occasions for debate, and of the second group to restrict debate on those occasions when it is legitimate.

It is one of the most difficult tasks of the Chair in the modern House of Commons to reconcile the rights of the minority with the obligation on the majority to secure the passage of essential items in the Government's programme. This task could not have been accomplished without the powers given by the standing orders and the consequent modifications of practice to which the House has from time to time agreed.

BOOK I

CONSTITUTION, POWERS AND PRIVILEGES  
OF PARLIAMENT





# CHAPTER I

## THE CONSTITUENT PARTS OF PARLIAMENT

### INTRODUCTORY

The present constitution of Parliament has been the growth of many centuries. Some knowledge of its origin and history, and particularly of the years of intense activity and experiment in the constitutional and legal fields between the twelfth and fourteenth centuries, which were among the most vital formative years of the modern British Parliament, is essential to a full understanding of its modern forms and proceedings.

Since the first edition of this work was published in 1844, a succession of what are now regarded as classical text-books by Stubbs (*a*), Dicey (*b*), Anson (*c*), Pollock and Maitland (*d*), Holdsworth (*e*) and Redlich (*f*) dealing with the theory and history of the constitution and of legal and parliamentary procedure, have appeared. Apart from those works, several new text-books of high value (*g*) are now available, which qualify the conclusion of the earlier authorities in the light of new research, and all these works render superfluous in this volume any lengthy summary of the history of parliamentary institutions. The immediate object of this book is to display Parliament in its present form, and to describe its various operations under existing laws and customs. In this connection the history of the past is of great importance, because it contains in almost every instance the only complete explanation of modern usage, but it is impracticable in a work of this kind to do more than indicate the existence of the vast background against which modern procedure stands (*h*).

### THE ORIGINS OF THE MODERN PARLIAMENT

A brief survey of recent research may be of value as an indication of those formative elements which have made the most important contribution to the strength and authority of the modern Parliament.

#### 1. THE JUDICIAL FUNCTIONS OF PARLIAMENT

One of the principal lines of recent research has revealed the importance of the judicial elements in the origins of Parliament. Maitland, in his introduction to the Parliament Roll of 1305 (*i*), was the first to indicate the importance of the fact that Parliament (in 1290) was regarded as the highest court of royal justice. Further research has confirmed the

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(*a*) Constitutional History of England (first published 1873-78).

(*b*) Law of the Constitution (first published 1885).

(*c*) Law and Custom of the Constitution (first published 1886).

(*d*) History of English Law (first published 1895).

(*e*) History of English Law (first published 1903).

(*f*) Procedure of the House of Commons (published 1908).

(*g*) Such as Jolliffe's Constitutional History of Medieval England, 1937.

(*h*) For example, a complete history of each one of the 279 Standing Orders relating to Private Business in the Commons has been recently compiled. Their codification only took place in the last century, and they cover only a small part of the procedure of the House; see H.C. 30, p. 125 (1944-45).

(*i*) Maitland, Memoranda de Parlamento (1305) Rolls Series, 1893.

essentially judicial character of the earliest Parliaments (*j*) and the fact that, even under Edward III, although Parliaments devoted a considerable part of their time to political and economic business, the dispensation of justice remained their chief function in the eyes of contemporaries.

A minute study of the documents (*k*) has established the chronology and the procedure of the sessions of that High Court of Parliament where justice was done and new remedies were found for new wrongs. Many of the cases dealt with by Parliament are to be found on the Rolls of the Court of King's Bench, of which select pleas have recently been edited (*l*). Other aspects of the judicial functions of Parliament have been dealt with, notably the treason appeals in the Parliament of 1388 and the origin of the procedure of impeachment in 1376 (*m*).

## 2. THE LEGISLATIVE FUNCTIONS OF PARLIAMENT

The new importance attached to the judicial functions has led historians to regard legislation as subsidiary to Parliament's work as a judicial body. They stress the importance of the part of the judges in thirteenth-century legislation (*n*), and tend to minimize the Commons' share in legislation in the early fourteenth century (*o*), showing that the period in the fourteenth century in which the initiative, even in form, lay with the Commons, was of very brief duration (*p*). But although important new works on the early activities of Parliament have recently appeared (*q*), a final verdict must await analysis of thousands of original parliamentary petitions on which bills were founded, many of which are bound up with the Ancient Petitions in the Public Record Office, which were before the Clerk when he drew up the Parliament Rolls of the fourteenth century.

## 3. THE PERSONNEL OF PARLIAMENTS

Till recent years, the study of the personnel of Parliament, with the object of determining the connections and political experience of its members, has not been pursued. In 1932, the report of a departmental committee, appointed to survey the sources available for such a study, recommended that sufficient material existed to make the task worth while (*r*).

(*j*) Mcllwain, *The High Court of Parliament and its Supremacy* (1910); Pollard, *Evolution of Parliament* (1920).

(*k*) Richardson and Sayles, *The Early Records of the English Parliaments*. (Bulletins, Inst. of Hist. Research, 1928, 1929); Richardson, *The Parliaments of Edward III* (Bulletin, Inst. Hist. Research, 1931), and *The King's Ministers in Parliament* (Eng. Hist. Review, 1931, 1932), also *Parliamentary Documents from Formularies* (Bulletin, Inst. Hist. Research, 1934).

(*l*) Sayles, *Select Pleas in the Court of King's Bench*, vol. I (Selden Society, 1936).

(*m*) M. V. Clarke, *Forfeitures and Treason in 1388* (Transactions Royal Hist. Society, 1931), and *The Origin of Impeachment* (Oxford Essays in Medieval History, presented to H. E. Salter, 1934).

(*n*) Plucknett, *Statutes and their Interpretation in the first Half of the Fourteenth Century* (1922); Richardson, *The Early Statutes* (Law Quarterly, 1934).

(*o*) Haskins, *The Statute of York and the Interest of the Commons* (1935).

(*p*) Howard Gray, *The Influence of the Commons on Early Legislation* (1932).

(*q*) e.g. Richardson, *Parliamentary Documents from Formularies* (Bulletin, Inst. Hist. Research, 1934), and *Rotuli Parliamentorum mediet, 1279-1373* (Royal Hist. Society, Camden Third Series, 1935).

(*r*) Interim Report of the Committee on House of Commons Personnel and Politics, 1264-1832, Cmd. 4130 (1931-32).

The question whether the Commons, in the fourteenth and fifteenth centuries, acted independently, or, as modern authorities (s) suggest, under the influence of the Lords, can only be solved by minute biographical research. Thanks, in great part, to the late Lord Wedgwood, whose biographical studies of Staffordshire members of Parliament appeared after twenty years of investigation (t), similar researches for all the counties of England have been continuing under the direction of the History of Parliament Trust. The results are also now available of investigations concerning the personnel of the Parliaments of Edward II, Edward III and Richard II in connection with particular problems, such as the extent to which boroughs evaded the obligation to send representatives to parliaments, and the frequency with which the same man was elected and re-elected to serve in a series of parliaments (u). There have also been various studies on parliamentary elections, and on the method by which the expenses of the knights and clergy were paid (v); and upon the financial relations between borough members and their constituents in the fourteenth and fifteenth centuries (w).

#### 4. THE POLITICAL IMPORTANCE OF PARLIAMENT

Two chronicles, only imperfectly known up till then, were printed in 1926 and 1927; Favent's History of the Marvellous Parliament of 1388 (x) and the Anonimale Chronicle, containing an eye-witness's account of the House of Commons in 1376 (y). In 1926, Tout had discussed their political importance (z), and in his great work, Chapters in Medieval Administrative History, he brought out the connection between the growth of the political activity of parliaments and the presence in them of the Commons. Edward II was deposed by a Parliament (a), and

(s) Neale, The Commons' Privilege of Free Speech in Parliament, 1376-1601 (Tudor Studies, presented to A. F. Pollard, London, 1924); but see McFarlane in Royal Hist. Society Transactions, 1944; Richardson (Bulletin, Inst. of Hist. Research, vol. IX, p. 10 ff. and vol. XI, p. 155-7).

(t) Staffordshire Parliamentary History, 1213-1842. See also Wedgwood, John of Gaunt and the Packing of Parliament (Eng. Hist. Review, 1930).

(u) Lapsley, Knights of the Shire in the Parliaments of Edward II (Eng. Hist. Review, 1919); Edwards, Personnel of the Commons in the Parliaments of Edward I and Edward II (Essays in Medieval History, presented to T. F. Tout, 1925), and Re-election and the Medieval Parliament (History, 1926); Pollard, History and Statistics (History, 1926); Lewis, Re-election to Parliament in the Reign of Richard II (Eng. Hist. Review, 1933); McKisack, Borough Representation under Richard II (Eng. Hist. Review, 1924); and The Parliamentary Representation of the English Boroughs during the Middle Ages (1932); Wood-Legh, The Knights' Attendance in the Parliaments of Edward III (Eng. Hist. Review, 1932).

(v) Cam, The Parliamentary Writs *de expensis* of 1258 (Eng. Hist. Review, 1931); Davis, A Parliamentary Election in 1298 (Bulletin, Inst. Hist. Research, 1925); Latham, Collection of the Wages of the Knights of the Shire in the XIVth and XVth centuries (Eng. Hist. Review, 1933); Lowry, Clerical Proctors in Parliament and Knights of the Shire, 1280-1374 (Eng. Hist. Review, 1933); Williams, A Norfolk Parliamentary Election in 1461 (Eng. Hist. Review, 1925).

(w) McKisack, The Parliamentary Representation of the English Boroughs during the Middle Ages (1932).

(x) McKisack, Thomas Favent, *Historia sive Narracio de modo et forma mirabilis Parlamenti, 1388* (Camden Miscellany XIV, Royal Hist. Society, 1926).

(y) The Anonimale Chronicle, 1333-1381 (Galbraith, 1927).

(z) Tout, The English Parliament and Public Opinion, 1376-1388 (Reprinted in *Collected Papers of T. F. Tout*, vol. II, 1934), and Chapters in Medieval Administrative History. (Vol. III and IV, 1928. Index, vol. VI, 1933.)

(a) Clarke, Committees of Estates and the Deposition of Edward II (Historical Essays in Honour of James Tait, IX, 1933).

Richard II probably by an assembly of estates (*b*), but it is equally clear in the two cases that the nobles wished the Commons to share with them the responsibility for their revolutionary actions.

#### 5. THE ADMINISTRATIVE AND SOCIAL IMPORTANCE OF THE COMMONS AND THE APPEARANCE OF ESTATES

The importance of the administrative function in the formation of Parliament has also been demonstrated by modern research. A number of studies, social, economic and constitutional, have developed Stubbs' thesis that the governmental responsibilities of the local communities in the thirteenth century played a large part in the formation of the estates, whether of knights, or burgesses, or of clergy. Historians have stressed the importance for the monarchy of keeping in close touch with these local communities, whose good will and co-operation were indispensable alike for the peace and good government of the realm and for the collection of the taxes (*c*). Studies of local self-government in the thirteenth century have brought out its share in the development of a sense of responsibility and political consciousness (*d*), and it has been clearly shown (*e*) that under Henry III the knights of the shire were beginning to count in politics. The tendency towards social stratification which divided the nobles and the knights into two distinct estates has been further explored in recent studies (*f*), and traced through the parliaments of the fourteenth century down to the deposition of Richard II (*g*).

#### 6. REPRESENTATION AND CONSENT TO TAXATION

In the last few years, however, there has been apparent a renewed inclination toward Stubbs' interpretation of the origins of the House of Commons; authoritative arguments (*h*) have been adduced to show that it was, above all, the need for getting the consent of the Commons to taxation which led the monarchy to develop the representative system. From a study of the anonymous and undated work, *Modus tenendi Parliamentum*, assigned by recent research to the reign of Edward II (*i*), modern scholarship has formulated the doctrine that representation and the consent to taxation form the basis of the power of the Commons, and

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(*b*) Lapsley, The Parliamentary Title of Henry IV (Eng. Hist. Review, 1934); Wilkinson, Deposition of Richard II (Eng. Hist. Review, vol. LIV, 1939).

(*c*) Pasquet, An Essay on the Origins of the House of Commons. (Translated. Preface by Lapsley, 1925); Riess, Geschichte des Wahlrechts (1885).

(*d*) E. G. White, Self-government at the King's Command (1933); Cam, The Hundred and the Hundred Rolls (1930); Lapsley, Buzones (Eng. Hist. Review, 1932).

(*e*) Jacob, Studies in the Period of Baronial Reform and Rebellion, 1258-1267 (1925); Trehearne, The Baronial Plan of Reform, 1258-1263 (1932).

(*f*) Powicke, Medieval England (1931); Stenton, The Changing Feudalism of the Middle Ages (History, 1935); M. V. Clarke, Committees of Estates and the Deposition of Edward II (Historical Essays in Honour of James Tait, 1933).

(*g*) Pollard, The Evolution of Parliament (1920); M. V. Clarke, *op. cit. supra*, n. (*f*)., Richardson, The Parliaments of Edward III (Bulletin, Inst. Hist. Research, 1931).

(*h*) Stephenson, Taxation and Representation in the Middle Ages (Haskins Anniversary Essays, 1929); J. G. Edwards, The *Plena Potestas* of English Parliamentary Representatives (Oxford Essays in Medieval History, presented to H. E. Salter, 1934); M. V. Clarke, Medieval Representation and Consent (1936).

(*i*) Hodnett and White, Manuscripts of the *Modus Tenendi Parliamentum* (Eng. Hist. Review, 1919); Morris, The Date of the *Modus Tenendi Parliamentum* (Eng. Hist. Review, 1934); M. V. Clarke, Medieval Representation and Consent (1936).

that this rather than the judicial function is the essential element of a parliament. This doctrine also links up the form of parliamentary writs with that financial responsibility to the electors which is the basis of parliamentary sovereignty as it exists to-day (j). Further, the origin of the theory of representation and the doctrine of consent are traced to an ecclesiastical origin, by attributing to the Lateran Council of 1215 the motive source, to the practice of English Church Councils from 1226 onwards the precedents, and to ecclesiastical leaders the principle, applied first in connection with taxes on "spiritualities," that taxation demands both representation and consent (k). Parallel studies (l) had already brought out the importance of the taxation of the clergy in this connection. It is now shown that the feudal doctrine of consent to taxation lacked the element of representation; and that the motives which led the central government to develop the practice of representation had no reference to any theory of consent. The Church, affirming the principle "*quod omnes tangit, ab omnibus approbetur*," linked the two practices together, and so laid the foundation of the power of the Commons. Even more important was the contribution of the leaders of the Church in England, both in principle and in practice, to the union of the different estates of the realm, into one single *communitas regni*; in a national crisis one *procurator* or *prolocutor* who spoke in the name of all the estates, as in 1327 and 1399, represented in his person this union, and also the principle of unanimity which had not yet given way to that of the majority.

The triumph of the *communitas regni* over the different *communitates* of clergy, nobles, burgesses and merchants is reflected not only in the co-operation of clergy, nobles and commons from 1322 to 1399, but also in the failure of the attempts made by Edward III to detach the shires (1337-41) and the merchants (1336-65) from their allies (m). The triumph of solidarity and of political responsibility over the division by classes which underlay the conception of estates may well explain the survival of the English Parliament into the modern period (n).

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(j) Stephenson, *Taxation and Representation in the Middle Ages* (Haskins Anniversary Essays, 1929); McKisack, *The Parliamentary Representation of the English Boroughs during the Middle Ages* (1932); J. G. Edwards, *The Plena Potestas of English Parliamentary Representatives* (Oxford Essays in Medieval History, presented to H. E. Salter, Oxford, 1934). For other examples of financial responsibility see Sayles, *Representation of Cities and Boroughs in 1268* (Eng. Hist. Review, 1925), and *Parliamentary Representation in 1294, 1295 and 1307* (Bulletin Inst. Hist. Research, 1925); Gaines Post, on *Plena Potestas in Traditio* (Catholic University of America, 1943) shows the Crown's part in establishing the technique of representation and of fiscal responsibility.

(k) For a study of the political theory underlying English representative institutions see R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West*, vol. VI (1936).

(l) Lunt, *The Valuation of Norwich* (1926) and *Consent of the English Lower Clergy to taxation during the Reign of Henry III* (Essays in Honour of George Lincoln Burr).

(m) See M. V. Clarke, *Medieval Representation and Consent*, p. 342; and G. Unwin, *The Estate of Merchants, 1336-1365, in Finance and Trade under Edward III* (1918).

(n) For comparative studies of the early Scottish and Irish Parliaments see T. F. Tout, *The Parliaments of Scotland* (1925, Reprinted in *Collected Papers of T. F. Tout* vol. I, 1932); M. V. Clarke, *Irish Parliaments in the Reign of Edward II* (Transactions, Royal Hist. Society, 1926), *Medieval Representation and Consent* (1936); McKisack, *Borough Representation under Richard II* (Eng. Hist. Review, 1924); Stephenson, *Taxation and Representation in the Middle Ages* (Haskins Anniversary Essays, 1929).

## CONSTITUENT PARTS OF THE PARLIAMENT OF THE UNITED KINGDOM

The Parliament of the United Kingdom is composed of the Sovereign, the House of Lords and the House of Commons ; these several powers collectively form the legislature ; and, as distinct members of the constitution, they exercise functions and enjoy privileges peculiar to each (o).

### THE SOVEREIGN

The Crown of these realms is hereditary, being subject, however, to special limitations by Parliament ; and the king or queen has ever enjoyed, by prescription, custom and law, the chief place in Parliament and the sole executive power. The right of succession and the prerogatives of the Crown itself are, however, subject to limitations and change by legislative process with the consent and authority of the sovereign (p).

**Limitations of Prerogative.**—To the changes that have been effected, at different times, in the legal succession to the Crown, it is needless to refer, as the Revolution of 1688 is a sufficient example. The power of Parliament over the Crown is distinctly affirmed by the statute law, and recognized as an important principle of the constitution.

The Act of Settlement (1700-1) affirms "that the laws of England are the birthright of the people thereof ; and all the kings and queens (q) who shall ascend the throne of this realm ought to administer the government of the same according to the said laws ; and all their officers and ministers ought to serve them respectively according to the same." The Succession to the Crown Act, 1707, declares it high treason for any one to maintain and affirm, by writing, printing, or preaching, "that the kings or queens of this realm, by and with the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the Crown, and the descent, limitation, inheritance, and government thereof." Nor was this a modern principle of constitutional law, established, for the first time, by the Revolution of 1688. If not admitted in its whole force so far back as the great charter of King John, it was affirmed by Parliament in very ancient times ; the Revolution defined, rather than limited, the constitutional prerogatives of the king, and the Bill of Rights (r) was mainly declaratory of the ancient law (s).

(o) For the conditions laid down by the Parliament Act, 1911, under which Bills which have been passed by the House of Commons but have been rejected by the House of Lords may receive the Royal Assent and acquire the force of law, see p. 561.

(p) For additions made by statute to the royal style and title, see the Royal Titles Acts, 1876 and 1901, and see Index of the Statutes, tit. Crown.

(q) For a statutory confirmation of the ancient right of females to inherit the Crown, see 1 Mar. Sess. 2, c. 1 ; and 1 Mar. Sess. 3, c. 1 ; 1 Eliz. c. 3. For the form in which the accession of a sovereign is recognized, see C. J. (1837) 488 ; ib. (1901) 2 ; ib. (1910) 148, ib. (1935-36) 49 ; ib. (1936-37) 58.

(r) "That the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal." . . . "That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal."—1st, 2nd, and 4th Articles of the Bill of Rights.

(s) See Allen, *Rise and Growth of Royal Prerogative in England* ; Stubbs, *Const. Hist.* i. 135 ; ii. 137, 352, 507.

**Prerogative in connection with Parliament.**—The prerogatives of the Crown, in connection with the legislature, are of paramount importance. The legal existence of Parliament results from the exercise of royal prerogative.

As "supreme governor, as well in all spiritual or ecclesiastical things or causes as temporal" (t), the King virtually appoints the archbishops and bishops, who, as "lords spiritual," form part of the House of Lords. All titles of honour are the gift of the Crown, and thus the "lords temporal" also, who form the remainder of the upper house, have been created by royal prerogative, and their number may be increased at pleasure. In early times the summons of peers to attend Parliament depended entirely on the royal will: but their hereditary titles have long since been held to confer a right to sit in Parliament. To a king's writ, also, the House of Commons owe their election as the representatives of the people. To these fundamental powers are added others, of scarcely less importance, which will be noticed in their proper place.

The Crown also has a close relationship with the presiding officer of each House. The Speaker of the Lords is the lord high chancellor or the lord keeper of the great seal,—an officer more closely connected with the Crown than any other in the State; and even the Speaker of the Commons, though elected by them, is submitted to the approbation of the Crown (pp. 267 and 269).

#### THE HOUSE OF LORDS

The Lords Spiritual and Temporal sit together, and jointly constitute the House of Lords.

**Lords Spiritual.**—The lords spiritual are the archbishops and bishops of the Church of England having seats in Parliament by ancient usage and by statute (u). In 1847, on the creation of the bishopric of Manchester, it was enacted that the number of bishops sitting in Parliament should not be increased in consequence, and a similar provision has been made in the case of bishoprics which have been created subsequently (v).

The bishops now having seats in Parliament are the two archbishops

(t) Act 1 Eliz. c. 1, s. 19; Gibson, Codex, i. 45. Concerning the use of the title "Supreme Head of the Church," see 4 Co. Inst. 344; Hooker, Eccl. Pol. book viii. c. 4; Zurich Letters (Parker Society), i. 29. 33; and the preamble of 2 & 3 Ann. c. 20.

(u) They were excluded by Act 16 Cha. 1, c. 27, and did not resume their seats, after the Restoration, in the Convention Parliament, but were restored in the next Parliament, by statute 13 Cha. 2, c. 2. The four bishops added to the House of Lords, at the Union, to represent the episcopal body of Ireland, were withdrawn after the 1st January, 1871, on the disestablishment of the Irish Church by the Irish Church Act, 1869. On the disestablishment of the Church in Wales on the 31st March, 1920 (see s. 2 of the Welsh Church (Temporalities) Act, 1919) bishops of that Church ceased, under s. 2. (2) of the Welsh Church Act, 1914, to be qualified to sit or vote as Lords of Parliament, and no bishop of the Church in Wales is, as such, to be summoned to the House of Lords. The vacancies caused by the withdrawal of the bishops of the Church in Wales who had seats in Parliament were supplied by the issue of writs of summons to bishops not disqualified by the Act who had not previously received writs of summons. *Ibid.* s. 2 (3).

(v) The Ecclesiastical Commissioners Act, 1847, s. 2; St. Albans, 1875 (38 & 39 Vict. c. 34); Truro, 1876 (39 & 40 Vict. c. 54); Liverpool, Newcastle, Southwell, and Wakefield, 1878 (41 & 42 Vict. c. 68); Bristol, 1884 (47 & 48 Vict. c. 66); Southwark and Birmingham, 1904 (4 Edw. 7, c. 30); Chelmsford, St. Edmundsbury and Ipswich, and Sheffield, 1913 (3 & 4 Geo. 5, c. 36); Bradford and Coventry, 1917 (7 & 8 Geo. 5, c. 57); Portsmouth and Guildford, 1923 (14 & 15 Geo. 5, Measure No. 2); Blackburn, 1923 (14 & 15 Geo. 5, Measure No. 4); Derby, 1923 (14 & 15 Geo. 5, Measure No. 5); Leicester, 1925 (15 & 16 Geo. 5, Measure No. 2).



(of Canterbury and York) and twenty-four of the English bishops (*w*). Whenever any one of the sees of Canterbury, York, London, Durham, or Winchester becomes void, the vacancy in the House of Lords is supplied by the issue of a writ of summons to the bishop elected to the see; and a similar writ is issued to any bishop already sitting in the House of Lords who is translated to another see. If a vacancy among the bishops sitting in Parliament is caused by the avoidance of any other see than the five already mentioned, such vacancy is supplied "by the issue of a writ of summons to that bishop of a see in England who, having been longest bishop of a see in England, has not previously become entitled to such writ" (*x*). A bishop may, under s. 2 of the Bishops' Resignation Act, 1869, resign his see, and therewith his seat in the House of Lords, when the vacancy is filled up in the same manner as if he were dead (*y*).

**Lords Temporal.**—The lords temporal are divided into dukes, marquesses, earls, viscounts and barons, whose titles are of different degrees of antiquity and honour, but the distinction is one of peerage and does not affect their rights or powers as lords of Parliament.

**Representative Peers of Scotland.**—On the union with Scotland, in 1707, the Scottish Peers were not admitted, as a class, to seats in the British Parliament: but, in pursuance of the provisions of several statutes, they elect for each Parliament sixteen representatives from their own body (*z*). The representative peers of Scotland enjoy all the privileges of Parliament, including the right of sitting upon the trials of peers; and all peers of Scotland are peers of Great Britain, and have rank and precedence immediately after the peers of the like orders and degrees in England, at the time of the union, and before all peers of Great Britain of the like orders and degrees created since the union, and are to be tried as peers, and enjoy all privileges as peers, except the right of sitting in Parliament, or upon the trials of peers (*a*). The Scottish peerage consists exclusively of the descendants of peers before the union, as no provision was made for any subsequent creation of Scottish peers by the Crown.

An authentic list of the peerage was entered in the roll of peers, by order of the House of Lords, on the 12th February, 1708, to which other peerages have since been added by order of that house, when claims have been established; and in order to prevent the assumption of dormant and extinct peerages, it is provided, by the Representative Peers (Scotland) Act, 1847 that no title standing in that roll, in right of which no vote has been given since 1800, shall be called over at an election, without an order of the House of Lords (*b*). The House of Lords, when they have disallowed any

(*w*) The Bishop of Sodor and Man has no seat in Parliament. A former bishop, Lord Auckland, sat as a peer amongst the barons.

(*x*) Bishops' Act, 1878, s. 5.

(*y*) See also ss. 4, 12, 13.

(*z*) Union with Scotland Act, 1706, art. xxii & xxiii; Acts of the Parliament of Scotland, 1707, c. 8; the Scottish Representative Peers Act, 1707; the Representative Peers (Scotland) Act, 1847; the Representative Peers (Scotland) Act, 1851.

(*a*) Union with Scotland Act, 1706, art. xxiii.

(*b*) Similar provision was made in the case of peerages in respect of which no vote had been received or counted for fifty years by the Representative Peers (Scotland) Act, 1851, s. 4.

claim, may also order that such title shall not be called over at any future election.

The Act of Union provides that "in case of the death or legal incapacity" of any one of the representative peers of Scotland, the peers of Scotland shall nominate another of their own number in his place, but it would seem that a vacancy among the representative peers is not caused when one of them is created a peer of the United Kingdom (c).

**Representative Peers of Ireland.**—Under the Act for the legislative union with Ireland, which came into operation in 1801, the Irish peers elected twenty-eight representatives for life from the peerage of Ireland. But since the passing of the Irish Free State Agreement Act, 1922, there has been no election of representative peers for Ireland, and the attendance at the Bar of the House of Lords of the Clerk of the Crown and Hanaper in Ireland with the writs and returns has been dispensed with. The representative peers of Ireland, of whom in 1945 eleven still survived, are entitled to the privileges of Lords of Parliament, and all the peers of Ireland have privilege of peerage (d). If not representative Irish peers they may be elected as members of the House of Commons, for any place in Great Britain; but, while sitting there, they do not enjoy the privilege of peerage (e).

**Life Peerages.**—Life peerages were formerly not unknown to the constitution (f):

In 1856 Queen Victoria, having been advised to revive the dignity, with a view to improving the appellate jurisdiction of the House of Lords, created Sir James Parke, late one of the barons of the Court of Exchequer, by letters-patent, Baron Wensleydale, "for and during the term of his natural life." But the House of Lords referred these letters-patent to a Committee of Privileges, which, after examining all the precedents of life peerages, reported their opinion, "that neither the said letters-patent, nor the said letters-patent with the usual writ of summons issued in pursuance thereof, can enable the grantee therein named to sit and vote in Parliament." The house concurred in this opinion, and Lord Wensleydale, therefore, did not offer to take the oaths and his seat, but was shortly afterwards created an hereditary baron, in the usual form (g). The expediency of creating life peers, however, continued to be discussed (h).

Provision was made by statute for the constitution of four lords of

(c) Union with Scotland Act, 1706, ss. 6 & 7. The modern practice when either a Scotch or Irish representative peer is created a peer of the United Kingdom is as stated in the text. The Earl of Strathmore and Kinghorne, a representative peer of Scotland, created a baron of the United Kingdom with the title of Lord Bowes during the Parliament of 1886-92, sat throughout the Parliament as baron, and as representative peer of Scotland. In the case of the Duke of Queensberry and the Earl of Abercorn, created peers of the United Kingdom (13th February, 1787), the Lords resolved that they therefore ceased to sit as Scotch representative peers, L. J. (1783-87) 594, 26 Parl. Hist. 597.

(d) See *Coates v. Lord Hawarden*, 7 B. & C. 388.

(e) Union with Ireland Act, 1800, Fourth Article.

(f) H. L. 18 (1856).

(g) H. L. 18, p. 106 (1856); L. J. (1856) 38, Parl. Deb. (1856) 140, c. 263, c. 129c. May, Const. Hist. i. 196-201.

(h) Parl. Deb. (1856) 142, c. 780, etc.; *ibid.* 143, c. 428, etc.

appeal in ordinary in 1876, and their number was increased to six in 1913, and to seven in 1929. They enjoy the rank of baron and are entitled to a writ of summons for life, but their dignity does not descend to their heirs (*i*).

**Distinction between Spiritual and Temporal Lords.**—The votes of the spiritual and temporal lords are intermixed, and the joint majority determine every question; but they sit apart, on separate benches, the place assigned to the lords spiritual being the upper part of the House, on the right hand of the Throne. The lords temporal are the hereditary peers of the realm, whose blood is ennobled, and whose dignities can only be lost by attainder, or taken away by Act of Parliament (*j*); but the bishops, not being ennobled in blood, are, as declared by the Lords' standing order No. LXVI, only lords of Parliament, and not peers.

By constant additions to the peerage the number of members of the House of Lords, comprising the several orders, spiritual and temporal, of which it is constituted, has been raised to nearly 800 (*k*).

## THE HOUSE OF COMMONS

The exact date of the admission of the Commons (*l*) to a distinct place in the legislature has always been a subject of controversy.

The exact date of the admission of the Commons to a distinct place in the legislature has always been a subject of controversy.

Various dates have been assigned for the formal separation of the two Houses; in the fourteenth century, separate places are recorded in the Rolls of Parliament (*m*); but as it is admitted that they often sat apart for deliberation, particular instances in which they met in different places will not determine whether their separation, at those times, was temporary or permanent. When the Commons deliberated apart, they sat in the chapter-house of the abbot of Westminster; and they continued their sittings in that place after their final separation (*n*).

**Member of Parliament.**—In the reign of Henry VIII the title "Member of our Parliament" was applied indifferently to the Members of either House of Parliament, but since the Restoration the title of

(*i*) Appellate Jurisdiction Act, 1876, ss. 6 and 14; Appellate Jurisdiction Act, 1913, s. 1; Appellate Jurisdiction Act, 1929, s. 2.

(*j*) 12 Co. Rep. 107; 12 Mod. 56; 1 Bl. Com. 402; 3rd Rep. Dignity of Peer, 93; Burnet, II. 202.

(*k*) In March, 1945, there were 796.—*Roll of Lords Spiritual and Temporal*.

(*l*) Until 1872, the ancient terms of knights, citizens, and burgesses, barons of the cinque ports and burgesses of the universities, were used in the writs and returns; but by the Parliamentary and Municipal Elections Act, 1872, these distinctions were discontinued, and all are alike termed *members* in the writs and returns.

(*m*) 2 R. P. 136 and 237a.

(*n*) Elsynge, 104; 1 Parl. Hist. 91; 2 Rot. Parl. 289, 351. The first known place of assembly of the Commons apart from the Lords was the painted Chamber in the Palace of Westminster where they sat in 1343, the Lords sitting in the Chambre Blanche, 2 Rot. Parl. 136, 237a. For a full account of the various meeting places of the Commons until their removal to St. Stephen's Chapel in 1547, see Dasent, *Speakers*, 41. On the restoration of the Palace of Westminster after the fire, 16th October, 1834, the Chambers allotted to the Houses of Parliament were first used by the Lords, 13th April, 1847; by the Commons, 30th May, 1850, C. J. (1850) 377.

Member of Parliament has been used as the designation of a Member of the House of Commons (*o*).

#### NUMBER OF THE COMMONS AT DIFFERENT TIMES

The number of members admitted to the House of Commons has varied considerably at different periods. In addition to those boroughs which appear from the first to have returned burgesses to Parliament, many others had that privilege conferred upon them by charter or by statute, in succeeding reigns; while some were omitted by the negligence or corruption of sheriffs, and others were discharged from what they considered a heavy burthen—the expense of maintaining their members. In the reign of Henry VI, there were not more than 300 members of the House of Commons. The legislature added 27 for Wales (*p*), and four for the county and city of Chester (*q*), in the reign of Henry VIII, and four for the county and city of Durham, in the reign of Charles II (*r*); while 180 new members were added by royal charter between the reigns of Henry VIII and Charles II (*s*).

**After Union with Scotland and Ireland.**—Forty-five Members were assigned to Scotland, as her proportion of Members in the British Parliament, on the union of that kingdom with England; and one hundred to Ireland at the commencement of the nineteenth century, when her Parliament became incorporated with that of the United Kingdom. By these successive additions the number was increased to 658; and notwithstanding the changes effected in the distribution of the elective franchise by the Reform Acts in 1832, that number continued unaltered, except by the disfranchisement of certain cities and boroughs for corruption, until the year 1885, when the number of the House was raised to 670 by the operation of the Redistribution of Seats Act, 1885 (see p. 14). By the Representation of the People Act, 1918, the number of Members was increased to 707, but the reduction of the number of Members for constituencies in Northern Ireland from 52 to 13 under the Government of Ireland Act, 1920, and the cessation of representation of constituencies in Southern Ireland consequential on the establishment of the Irish Free State, reduced the number of members of the House of Commons to 615. As a result of the House of Commons (Redistribution of Seats) Act, 1944 (*t*), which made temporary provision for the subdivision of certain abnormally large constituencies (specified in the Second Schedule to the Act) (*u*), the number of Members was increased by 25 to 640.

(*o*) State Papers, iii. 395; Gardiner's Commonwealth and Protectorate, i. 296 *n. 2*. See, however, H. L. Deb. (1916) 22, c. 82.

(*p*) 27 Hen. 8, c. 26.

(*q*) 34 Hen. 8, c. 13.

(*r*) 25 Cha. 2, c. 9.

(*s*) Christian's Notes to Blackstone; 2 Hatsell, 413.

(*t*) See also pp. 14–16.

(*u*) This partial measure of redistribution was recommended by the Speaker's Conference on Electoral Reform and Redistribution of Seats 1944, in their first report (Letter from Mr. Speaker to the Prime Minister, 24th May, 1944; Cmd. 6534).

**Representation for England and Wales.**—The object of the English Reform Act (the Representation of the People Act, 1832), as stated in the preamble, was to correct divers abuses that had long prevailed in the choice of Members. The right of returning Members was taken from many inconsiderable places, and granted to large, populous and wealthy towns. The number of knights of the shire was increased to 159, several of the counties being divided into electoral districts or divisions, and the elective franchise was considerably extended. To effect these changes, 56 boroughs of England and Wales were entirely disfranchised, and 30, which had previously returned two Members, were restricted to one Member; while 42 new boroughs were created, of which 22 were each to return two Members, and 20 a single Member. Several small boroughs in Wales were united for the purpose of contributing to return a Member. The result of these and other local arrangements, which it is not necessary to describe, was that the two universities and the several cities and boroughs contributed 341 citizens and burgesses for England and Wales.

By the Representation of the People Act, 1867, the boroughs of Totnes, Reigate, Yarmouth, and Lancaster were disfranchised; 38 boroughs previously returning two Members were reduced to one. Manchester, Liverpool, Birmingham, and Leeds each received a third Member; Merthyr Tydfil and Salford each a second Member; the Tower Hamlets were divided into two boroughs, each returning two Members; 10 new boroughs were created, of which Chelsea returned two Members, and every other borough one only. By these arrangements the representatives for boroughs were reduced by 26; and the University of London became entitled to return one Member. But before this Act came into operation, seven English boroughs, viz., Arundel, Ashburton, Dartmouth, Honiton, Lyme Regis, Thetford and Wells, were disfranchised by the Representation of the People (Scotland) Act, 1868, and the seats added to Scotland. By the Act of 1867, 13 counties were further divided, receiving an addition of 25 Members. By the Redistribution of Seats Act, 1885, the representation of England and Wales was subjected to the following rearrangement: 53 counties, in 253 divisions, returned 253 Members; 143 cities and boroughs, in 215 divisions, returned 237 Members; 3 universities returned 5 Members; making a total number of 495 for England and Wales. Under the Representation of the People Act, 1918, England and Wales returned, for 58 parliamentary counties in 254 divisions, 254 Members; for 137 parliamentary boroughs in 255 divisions, 266 Members; and for twelve universities in 5 university constituencies, 8 Members; making a total number of 528 for England and Wales. This number was temporarily increased to 553 under the provisions of the House of Commons (Redistribution of Seats) Act, 1944.

**Representation for Scotland.**—The number of Members for Scotland was increased by the Scottish Reform Act (the Representation of the People (Scotland) Act, 1832) from 45 to 53, 30 of whom were commissioners of shires, and 23 commissioners of burghs, representing towns, burghs, or districts of small burghs. By the Representation of the People (Scotland) Act, 1868, the number of Members for Scotland

was increased to 60, 3 new Members being given to shires, 2 to the universities, and 2 to cities and burghs; and under the Act of 1885 Scotland returned for 34 counties, in 39 divisions, 39 Members; for 7 cities and towns, 18 Members; for 13 districts of burghs, 13 Members; for 4 universities, 2 Members; making a total number of 72 Members for Scotland. Under the Representation of the People Act, 1918, Scotland returns for 21 parliamentary counties in 38 divisions, 38 Members; for 13 parliamentary boroughs in 32 divisions, 33 Members, and for 4 universities in 1 university constituency, 3 Members; making a total representation for Scotland of 74 Members. This representation was not affected by the House of Commons (Redistribution of Seats) Act, 1944.

**Representation for Ireland.**—By the Irish Reform Act (the Representation of the People (Ireland) Act, 1832) the number of representatives for Ireland in the Imperial Parliament was increased from 100 to 105. The representation of Ireland in the Parliament of the United Kingdom was reduced by the Government of Ireland Act, 1920, in the case of Southern Ireland constituencies to 33 Members, 4 being Members for boroughs, 26 being Members for counties, and 3 being Members for universities, and in the case of Northern Ireland to 13 Members, 4 being Members for boroughs, 8 for counties, and 1 being returned by the Queen's University of Belfast (a). This reduction was not to take place until the dissolution of the parliament then existing (b). The Irish Free State (Agreement) Act, 1922, provided (s. 1 (4)) that after its passing no writ should be issued for the election of a Member to serve in the House of Commons for a constituency in Ireland other than a constituency in Northern Ireland, with the result that the representation of Ireland was reduced to 13 Members, returned by constituencies in Northern Ireland. The temporary provisions of the House of Commons (Redistribution of Seats) Act, 1944, did not affect this representation.

**Permanent Machinery for the Redistribution of Parliamentary Seats.**—The House of Commons (Redistribution of Seats) Act, 1944, to which brief reference has been made in the preceding paragraphs, is remarkable for two reasons. In the past, redistribution of seats had been, to a large extent, consequential upon revision of the franchise, and the provisions for electoral reform and for redistribution were usually to be found in the same statute. In this instance provision was made for a measure of redistribution which had no immediate relation to reform of the franchise (c), and was, rather, rendered necessary by the movement of population, a factor relatively unimportant in the earlier adjustment of constituencies. This Act also made a new departure in that it provided for the first time permanent machinery for the redistribution of parliamentary seats. Formerly, Boundary Commissions were appointed *ad hoc* and, on the completion of their work, ceased to exist. But as

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(a) See s. 19 and Sch. V.

(b) See s. 73 (1).

(c) There had been no extension or alteration of the franchise since the Representation of the People (Equal Franchise) Act, 1928, assimilated the parliamentary franchises for men and women, reducing the qualifying age for women from thirty years to twenty-one years, and enlarged the scope of the business premises qualification.

mal-distribution of constituencies in relation to the electorate began to make itself felt more rapidly and more acutely than in earlier times, the advantage of permanent machinery, whereby a constant review of constituencies could be maintained and periodical adjustments effected with a minimum of parliamentary disturbance and loss of time, became apparent. In 1942, a departmental committee on electoral machinery (*d*) reported in favour of the establishment of permanent boundary commissions; and this recommendation was endorsed by the Speaker's Conference on Electoral Reform and Redistribution of Seats (*e*) two years later. The Act of 1944 made provision for separate Boundary Commissions for England, Wales, Scotland and Northern Ireland. The Speaker was nominated Chairman of each Commission and all other Members of the House of Commons or Members of either House of the Parliament of Northern Ireland were expressly excluded from membership of a Commission. The Commissioners, after the temporary subdivision of abnormally large constituencies to which reference has already been made, were required to submit to the Secretary of State a scheme for the general adjustment of constituencies throughout the United Kingdom (*f*), and subsequently to maintain a regular review and to report periodically. The date on which the Commissioners were to proceed to the general redistribution of seats was originally related to the coming into force of certain regulations to be made in accordance with the Parliamentary Electors (War-time Registration) Act, 1943. The Representation of the People Act, 1945, appointed, in substitution, the fifteenth day of October, 1946, or, if the Secretary of State should so direct, subject to the approval of Parliament, the next preceding or next succeeding fifteenth day of October. The procedure for giving effect to the recommendations of the Commissioners as to the temporary subdivision of the specified abnormally large constituencies was by Order in Council and the Act of 1944 provided that effect should also be given by Order in Council, where necessary, to reports of the Commissioners subsequent to the first general scheme of redistribution. The Speaker's Conference on Electoral Reform and Redistribution of Seats in their first Report (*g*) recommended that the comprehensive scheme should be the subject of a Bill, not an Order in Council.

#### PAYMENT OF MEMBERS

Constituencies were liable from the earliest times for the expense of maintaining their members during their attendance upon Parliament.

This liability was fixed in 1323 at four shillings a day for a knight of the shire and two shillings a day for a citizen or burgess (*h*). Provision was made for the payment of wages to the Welsh members when the representa-

(*d*) Cmd. 6408 (December, 1942).

(*e*) Letter from Mr. Speaker to the Prime Minister dated 24th May, 1944 (Cmd. 6534).

(*f*) The rules for the guidance of the Commissioners in preparing their proposals for a general redistribution of seats, as set out in the Third Schedule to the Act of 1944, contain an instruction that the number of constituencies in the several parts of the United Kingdom shall not be substantially different from the number existing before the temporary increase caused by the sub-division of very large constituencies.

(*g*) Letter from Mr. Speaker to the Prime Minister, dated 24th May, 1944 (Cmd. 6534). s. 23, p. 6)

(*h*) Prynne, 4th Register, 53. 495, 4 Co. Inst. 46. Hallam, Mid. Ages, iii. 114, n.

tive system was extended to Wales in the reign of Henry VIII. (i), although the practice of paying wages was falling into desuetude already in England. The practice had disappeared by the beginning of the seventeenth century save in a few isolated cases, but the legal liability of the constituencies for these payments to their members has never been removed (j).

In the nineteenth century there was a movement in favour of the payment of members out of national funds.

A provision to that effect was included in the Reform Bill introduced by Lord Blandford in 1830 (k), and formed one of the items of the People's Charter presented to the House of Commons in 1839 (l). Motions in favour of the proposal were brought before the House of Commons in 1888, 1892 and 1893 (m), and in 1895 a resolution in favour of the payment of a reasonable allowance to members was agreed to (n).

In 1911, the expediency of paying a salary of four hundred pounds a year to members who were not in receipt of salaries as ministers, officers of the House or officers of His Majesty's Household was put to the test of the opinion of the House of Commons by a motion made by a member of the government. This motion was carried and a vote submitted to the Committee of Supply to carry out the views of the House was agreed to and embodied in the Appropriation Act of that year (o). Similar provision was made in subsequent sessions.

The payment authorised in session 1912-13 was the vote of four hundred pounds a year to 630 Members, H. C. 6, p. 89 (1912-13). In session 1913 and subsequent sessions the payment has been declared to include an allowance of one hundred pounds for expenses, H. C. 226, p. 4 (1913) (Revised Estimate). Any deduction for expenses beyond this sum is subject to No. 10 of the Rules applicable to Schedule E of the Income Tax Act, 1918, H. C. Deb. (1921) 143, c. 1542; Cmd. 1352. See also Public Accounts Committee, 2nd Report, H. C. 179, p. iv. (1913).

The payment made to Members is salary or income within the meaning of the Bankruptcy (Ireland) Amendment Act, 1872, s. 51, and an order appropriating a portion thereof for the benefit of creditors may be made, *Hollinshead v. Hazleton*, [1916] 1 A. C. 428. A deduction is not made from a Member's salary in respect of his pay as an officer of the Territorial Force, H. C. Deb. (1914-16) 70, c. 1258; and a proposal to deduct from the salaries of Members on active service the pay drawn by them from Army and Navy votes was not persisted in, H. C. Deb. (1914-16) 70, c. 1257, 1701, 1745. For a motion declaring that a Member should not receive his salary and in addition full naval or military pay made by the Government, but withdrawn, see C. J. (1916) 49, H. C. Deb. (1916) 81, c. 1388. See also revised estimate, H. C. 75 (1916).

(i) 27 Henry 8, c. 26; 34 & 35 ib. c. 26.

(j) Although the last authenticated payment of wages was probably that of Kingston-upon-Hull to Andrew Marvell until his death in 1678, a writ "*de expensis burgensium levandis*" was issued against the borough of Harwich, at the instance of its member, Mr. Thomas King, as late as 1681. Campbell, *Lives*, iii. 420.

(k) Parl. Deb. (1830) 22, c. 689.

(l) C. J. (1839) 339.

(m) C. J. (1888) 348; ib. (1892) 135; ib. (1893-4) 160.

(n) C. J. (1895) 108.

(o) C. J. (1911) 400, 406; Appropriation Act, 1911, Schedule B, Part. 7.



In reply to a Question whether Members serving in the Forces drew Army pay in addition to their salary as Members, the House was informed that the payment of the prescribed salary to a Member who was mobilised could not be withheld by executive decision; but that it was open to a Member to decline to take his parliamentary salary, *H. C. Deb.* (1938–39) 350, c. 212.

**Increase in Payment of Members.**—In 1920, a Select Committee, set up to inquire into the expenses of Members, expressed in their report (*p*) a doubt whether the amount of four hundred pounds a year was adequate and, although they did not favour any immediate change, recommended that the matter should receive further consideration in the near future.

A proposal to increase the allowance for expenses to four hundred pounds a year was rejected by the Committee of Supply in 1921, *C. J.* (1921) 173; *H. C. Deb.* (1921) 142, c. 1087; *H. C.* 110 (1921) (I).

But it was not until June, 1937, that the House accepted the recommendation and, after debate and division, resolved that the rate of salary payable to Members should be increased to six hundred pounds a year (*q*). Effect was given to this resolution by supplementary estimate in Committee of Supply in the following month (*r*), and the rate has since remained at that level. The salary of a Member becomes payable when he takes the oath or makes the affirmation required by law (*s*), and begins from the day on which the Clerk of the Crown intimates that all the returns have been received by him, or, when Parliament assembles on an earlier date, from that date in respect of those Members then returned and, in respect of other Members, from the day on which their return reaches the Clerk of the Crown. In the case of by-elections, Members draw their salaries from the date on which their return is certified by the Clerk of the Crown. A Member who has not taken the oath within six months of the return of his writ to the Clerk of the Crown is not entitled to claim any salary prior to the date when he takes the oath (*t*).

#### TRAVELLING EXPENSES OF MEMBERS

The Select Committee on Members' Expenses, 1920 (*u*), to which reference has been made in the preceding paragraph, recommended that first-class railway travelling should be provided for all Members, to be available between the terminus station in London and their constituencies (*v*). In 1924, after an earlier proposal to give effect to this recommendation had been rejected (*a*), the proposal was accepted, after debate and division on the necessary supplementary estimate (*b*), and from that time Members have been entitled to first- or third-class travel

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(*p*) *H. C.* 255 (1920).

(*q*) *C. J.* (1936–37) 309, *H. C. Deb.* (1936–37) 325, c. 1049.

(*r*) *C. J.* (1936–37) 379, *H. C. Deb.* (1936–37) 326, c. 2791.

(*s*) *H. C. Deb.* (1917–18) 90, c. 1691. An exceptional course was taken in 1945, see *H. C. Deb.* (1945–46) 413, c. 276.

(*t*) *H. C. Deb.* (1924) 170, c. 2556.

(*u*) *H. C.* 255 (1920).

(*v*) *H. C.* 255 (1920).

(*a*) *C. J.* (1921) 173, *H. C. Deb.* (1921) 142, c. 1087, *H. C.* 110 (1921) (I).

(*b*) *H. C.* 56 (1924), *H. C. Deb.* (1924) 172, c. 663.

vouchers (c) between London and their constituencies (d), including steamship passages. From 1936, free sleeping berth accommodation was added (e) to these facilities. For air travel Members must pay the excess over the railway fare (f).

#### MEMBERS' FUND

In the debate on the resolution which, in 1937, approved the increase in the rate of salary of Members from four hundred pounds to six hundred pounds a year (g), frequent reference was made to the desirability of providing, at the same time, some form of pension fund for Members or their dependents. The Government could not on that occasion give any undertaking with regard to such a fund; but they agreed to consider the matter further. A departmental committee was appointed in July, 1937, to examine the practical aspects of a pension scheme, and reported in November of that year (h). Early in 1939 the House approved the recommendations of the committee and declared itself in favour of the initiation of legislation to carry out their proposals (i). Before the end of the session the House of Commons Members Fund Act, 1939, received the Royal Assent. The Act provides for the making in certain cases of grants to those who have been Members of the House and to their widows and children; creates a fund by authorizing the deduction of twelve pounds per annum (j) from the salaries of all Members of the House; and makes provision for the appointment of trustees to administer the fund (k).

#### THE ELECTORATE

The persons by whom the Members of the House of Commons are elected may be described generally in a few words, if the legal questions connected with the franchise, which are both numerous and intricate, be avoided (l).

(c) Later that year the House was informed that Members who objected to availing themselves of these vouchers would be unable to claim an Income Tax allowance in respect of the cost of travel between their constituencies and London (H. C. Deb. (1924) 176, c. 1509). The Government also announced the arrangements made in regard to the use by Members of their railway vouchers in the event of a dissolution of Parliament. The general effect was to limit Members, before their re-election, to a single free journey to their constituencies immediately after the dissolution (H. C. Deb. (1924) 177, c. 730).

(d) In 1939, immediately after the outbreak of war, it was announced that Members serving in the Armed Forces would be given free transport facilities between their units and London for the purpose of attending Parliament (H. C. Deb. (1938-39) 351, c. 1183, 1963). In 1941 serving Members were granted free travel between their military stations and their constituencies when they obtained leave to attend to their Parliamentary duties (H. C. Deb. (1941-42) 376, c. 1282, H. C. Deb. (1941-42) 377, c. 1208).

(e) H. C. Deb. (1935-36) 315, c. 1858.

(f) H. C. Deb. (1934-35) 304, c. 748.

(g) See also p. 18.

(h) Cmd. 5624 (1937).

(i) C. J. (1938-39) 71, H. C. Deb. (1938-39) 343, c. 418.

(j) These deductions are regarded as contributions which are not allowable as a deduction for Income Tax purposes to the contributors (H. C. Deb. (1940-41) 372, c. 1101).

(k) For the appointment of trustees, see C. J. (1938-39) 482, H. C. Deb. (1938-39) 353, c. 1279.

(l) See Rogers on Elections, vol. 1 (1929 edit.) Part I.

## COUNTIES AND BOROUGHs (MEN)

By sections 1 and 6 of the Representation of the People Act, 1918, a man of full age and not subject to any legal incapacity was entitled to be registered as a parliamentary elector for a constituency, other than a university constituency, if he had resided in any premises, or had occupied for the purpose of his business, profession or trade any premises of the yearly value of not less than ten pounds, for the qualifying period of six months. These two franchises were substituted for all the existing franchises in counties and boroughs throughout the United Kingdom. By the Representation of the People (Economy Provisions) Act, 1926, the qualifying period was reduced from six months to three months.

## UNIVERSITY CONSTITUENCIES (MEN)

Before the passing of the Representation of the People Act, 1918, the university franchise had been confined to the members of the convocation or senate of a university, but by section 2 of that Act a man was entitled to be registered as a parliamentary elector for a university constituency if he was of full age and not subject to any legal incapacity, and had received a degree (other than a honorary degree) at any university forming, or forming part of, the constituency, or in the case of the Scottish universities was qualified under section 27 of the Representation of the People (Scotland) Act, 1868.

## COUNTIES, BOROUGHs AND UNIVERSITIES (WOMEN)

The Representation of the People (Equal Franchise) Act, 1928, provided for the assimilation of the parliamentary franchise for men and women and thus reduced the qualifying age for women to twenty-one years.

Until the Act of 1918 was passed, women had been disqualified for voting at parliamentary elections (*p*) but under section 4 of that Act a woman who had attained the age of thirty years, and was not subject to any legal incapacity, was entitled to be registered as a parliamentary elector for a constituency (other than a university constituency) if she was entitled to be registered as a local government elector, or was the wife of a husband entitled to be so registered, and as a parliamentary elector for a university constituency, if she would have been entitled to be so registered if she had been a man, or had passed the final examination, and kept under the conditions required of women by the university the period of residence necessary for a man to obtain a degree at any university forming, or forming part of, a university constituency which did not at the time the examination was passed admit women to degrees.

## SPOUSE'S QUALIFICATION

The Representation of the People (Equal Franchise) Act, 1928, also provided that a person should be entitled to be registered as a parliamentary elector for a constituency if he or she was the husband or wife of a person

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(*p*) See *Chorlton v. Lings* (1868) L. R. 4 C. P. 374; *Nairn v. University of St. Andrews* [1907] S. C. 849, [1908] S. C. 113, [1909] S. C. 10, [1909] A. C. 147. See also 4 Co. Inst. 4. 5.

entitled to be so registered in respect of a business premises qualification. This extension of the franchise was, however, repealed by the Representation of the People Act, 1945, which gave effect to a recommendation of the Speaker's Conference on Electoral Reform and Redistribution of Seats (*q*) and abolished the Spouse's qualification.

#### REGISTRATION OF ELECTORS

All persons who claim to vote must be registered before voting.

The Act of 1918 provided for the compilation in Great Britain (*r*) of two yearly registers, one to come into force on the 15th April and the other on the 15th October, for the qualifying periods ending on the 15th January and the 15th July respectively (*s*); and placed the responsibility for the preparation of the registration list in a university constituency on the governing body of the university (*t*). The Representation of the People Act, 1922 (*s. 1*), altered the dates for the termination of the qualifying period to the 15th December and the 15th June. The Representation of the People (Economy Provisions) Act, 1926 (*s. 9*), provided that only one register of electors should be made in each year. In October, 1939, following the outbreak of war, the Local Elections and Register of Electors (Temporary Provisions) Act, 1939, postponed the completion of the register and provided that, when it came into force on the 15th November, it should continue in force until the 15th October next following the expiry of the Act and that no further register should be prepared before the Act expired. The Local Elections and Register of Electors (Temporary Provisions) Act, 1940, provided that the Act of 1939 should remain in force until the 31st December, 1941, and its life was similarly extended by statute in 1941, 1942, 1943 and 1944 (*a*). The Parliamentary Electors (War-time Registration) Act, 1943, broke entirely new ground by providing temporary machinery for the registration of electors and the holding of a general election under war conditions. Following the recommendations of the departmental committee on electoral machinery, which reported in 1942 (*b*) the civilian residence register was made dependent on the National Register, the qualifying period was related to the date of initiation of an election, and there was provision for the preparation of a service register (*c*). The Parliamentary Electors (War-time Registration) Act, 1944, amended the provisions of the Act of 1943 as to qualification, and the Representation of the People Act, 1945, appointed a time for the compilation of the first register in the new form.

#### REGISTRATION OFFICERS

Under the Representation of the People Act, 1918, the officer responsible for the preparation of electoral registers is in England and Wales the clerk of the County Council in divisions of parliamentary counties and

(*q*) Letter from Mr. Speaker to the Prime Minister, dated 24th May, 1944, *s. 25*, p. 6.  
(*r*) In Ireland, and subsequently Northern Ireland, there was never provision for more than one yearly register; Representation of the People Act, 1918, *s. 44* (*11*).

(*s*) *Ibid.*, *s. 11*.

(*t*) *Ibid.*, *s. 19*.

(*a*) Local Elections and Register of Electors (Temporary Provisions) Acts of 1941, 1942, 1943 and 1944.

(*b*) Cmd. 6408 (December, 1942).

(*c*) The Representation of the People Act, 1918 (*ss. 5 and 6*) made special provision for the registration as parliamentary electors of persons of the required age and not subject to legal incapacity who were serving on full pay as members of the armed forces of the Crown or were engaged in war service as defined by the Act.

the town clerk in parliamentary boroughs, in Scotland the valuation assessor of each burgh, county or division of a county, and in Northern Ireland the clerk of the Crown and Peace (*d*).

The Act of 1918 (s. 13 and sch. 1) recites the duties of the registration officer with regard to the compilation of electoral registers and makes provision for the preparation of an absent voters list. It also provided (s. 14) for the hearing of claims by the registration officer, from whose decision an appeal lies to the County Court, and on a point of law from the County Court to the Court of Appeal, whose decision is final.

In Scotland (by s. 43 of the same Act) the sheriff court is substituted for the county court and an appeal lies to the court of three judges of the Court of Session constituted by section 23 of the Representation of the People (Scotland) Act, 1868.

#### DISQUALIFICATION OF ELECTORS

While it is not proposed to state all the grounds upon which persons may be disqualified from voting, peers (*e*), aliens, persons under twenty-one years of age, of unsound mind, or convicted of certain offences, are incapable of voting. The Commons also pass a sessional resolution regarding bribery at elections (*f*). There are now no disabilities attaching to persons employed by payment by a candidate at the election, so long as the employment is legal (*g*). The incapacity of a peer to vote at an election does not extend to peeresses in their own right (*h*). A peeress by marriage, if otherwise qualified, is entitled to exercise the parliamentary franchise (*i*).

Until the year 1910 the Commons passed a sessional resolution that the interference of any peer or prelate in an election was an infringement of their privileges (e.g. C. J. (1909) 4). The motion was limited by an amendment in 1910 to the intervention in elections of a Lord Lieutenant (C. J. (1910) 6). In session 1911 it was moved in this limited form and negatived, but in the following year it was agreed to (C.J. (1911) 7; *ibid.* (1912) 3). Since 1912 it has not been moved. On the 10th December, 1779, the

(*d*) Representation of the People Act, 1918, ss. 11, 12, 43 (8), 44 (3); Local Government (Scotland) Act, 1929, ss. 3 (7), S. R. & O. 1924 (No. 927).

(*e*) See sessional resolution of the Commons, e.g., C. J. (1942-43) 3; also debates in the Lords (Parl. Deb. (1852-53) 128, c. 791; *ib.* (1857-58) 151, c. 926, 927; and opinion of the attorney-general, *ib.* (1882) 275, c. 121. In 1872, the legal question of the right of peers to vote, or to be entered upon the register of voters, was conclusively decided by the Court of Common Pleas. The Earl of Beauchamp and the Marquess of Salisbury, having had their names struck off the register by the revising barrister, appealed to the Court of Common Pleas. The court unanimously decided that, in law, as derived from authorities and from the determination of election committees, as well as by resolutions of the House of Commons, peers had no right to vote: and the appeal was accordingly dismissed with costs, 15th November, 1872, 8 L. R. C. P. 245. This decision was followed in the case of a peer who claimed a right to vote at an election of a member for the University of Cambridge, Bristol, Marquis of, *v.* Beck (1907), 96 L. T. 55, 71 J. P. 99, 23 T. L. R. 224. See also the Report of the Committee of Privileges in the case of the Earl of Roden, who before his succession to the title, had been placed on the parliamentary register for the South Down division of County Down, and voted at an election in that division after succeeding to the title, as his name remained on the register, H. C. 153 (1911).

(*f*) E.g., C. J. (1942-43) 3.

(*g*) Representation of the People Act, 1918, s. 9 (4).

(*h*) Representation of the People Act, 1918, s. 9 (5).

(*i*) H. L. Deb. (1917-18) 27, c. 770.

Commons resolved that it was "highly criminal in any minister or ministers, or other servants under the Crown of Great Britain, directly or indirectly to use the powers of office in the election of representatives to serve in Parliament, etc." (C. J. (1778-80) 507).

#### LIMITATION ON RIGHT TO VOTE

At a general election a person is not entitled to vote for more than one constituency for which he or she is registered by virtue of a residence qualification or for more than one constituency for which he or she is registered by virtue of any other qualification whatever, Representation of the People (Equal Franchise) Act, 1928, s.4.

#### MODE OF ELECTION.

Elections of Members of the House of Commons are held by the sheriffs or other returning officers, in obedience to the King's writ out of Chancery (*j*), and are determined by the majority of registered electors (*k*). By the Ballot Act, 1872, the public nomination of candidates was discontinued, and the votes of electors are taken by ballot.

By s. 23 of the Representation of the People Act, 1918, persons duly entered by the registration officer on the absent voters list were enabled to vote by post or, in certain cases, to appoint voting proxies. The Representation of the People (No. 2) Act, 1920 (s. 2), extended the right of absent voters to vote by proxy. The Parliament (Election and Meeting) Act, 1943 (s. 9), gave service voters the right of voting by proxy. The Representation of the People Act, 1945, made temporary provision for postal voting by service voters and, as a consequence, provided that the counting of votes, instead of beginning as soon as possible after the close of the poll, should take place not earlier than twenty days after the close of the poll (ss. 25, 27, 28).

#### POLLS AT A GENERAL ELECTION

The Representation of the People Act, 1918, provided that at a general election, with the exception of the university constituencies, all polls should be held on one day (*l*), and that the day fixed for receiving nominations should be the same in all constituencies. It also provided that the day fixed by the returning officer for the election should in all cases be the eighth day after the date of the proclamation declaring the calling of the Parliament, and the day appointed by the returning officer for the poll should in all cases be the ninth day after the day fixed for the election (*m*).

(*j*) By the Parliamentary Elections Act, 1853, writs are now directed to the returning officers of boroughs instead of to the sheriff of the county.

(*k*) Electoral law and procedure are described in Rogers on Elections, vol. ii, 1928 edition, and a brief summary only is given here.

(*l*) The Postponement of Polling Day Act, 1945, provided, as a special measure to meet exceptional holiday conditions, that in certain constituencies polling day should be postponed to a day later than the day appointed for the poll.

(*m*) Representation of the People Act, 1918, s. 21 and Sch. 2. For a provision as to official telegraphic information as to the issue of a writ and the action that may be taken thereon, see *ib.* s. 21 (2).

*University polls.*—The poll at the English Universities is restricted to five days, and at Scottish University Elections to not less than four nor more than six days, Representation of the People Act, 1918, Sch. 5. Voting papers are allowed in University elections, and in the case of a contested election for a university constituency, where there are two or more members to be returned, any election of the full number of members is held according to the principle of proportional representation, each elector having one transferable vote, Representation of the People Act, 1918, ss. 20 (1), 36 (3).

#### POLLS AT A BY-ELECTION

In the case of a by-election in a county, the returning officer must give notice of the day of nomination within two days after he receives the writ, and in a borough, on the day on which he receives the writ, or the following day. In the case of a county election, the day of nomination must be fixed by the returning officer not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of nomination; and in a borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the notice and the day of nomination. In the case of all by-elections the poll takes place on such day as the returning officer may appoint, not being less than six or more than eight clear days after the day fixed for nomination (*n*).

#### COMPUTATION OF DAYS

In reckoning time for all election proceedings, Sunday, Christmas Day, Good Friday and public fast and thanksgiving days are to be excluded (*o*).

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(*n*) The Ballot Act, 1872, 1st Schedule, rules 1, 2; Representation of the People Act, 1918, s. 21; Representation of the People (No. 2) Act, 1920, s. 3.

(*o*) The Ballot Act, 1872, 1st Schedule, rule 56

## CHAPTER II

# POWER AND JURISDICTION OF PARLIAMENT

### EXTENT OF LEGISLATIVE AUTHORITY OF PARLIAMENT COLLECTIVELY

The constitution has assigned no limits to the authority of Parliament over all matters and persons within its jurisdiction. A law may be unjust, and contrary to sound principles of government; but Parliament is not controlled in its discretion, and when it errs, its errors can only be corrected by itself. To adopt the words of Sir Edward Coke, the power of Parliament "is so transcendant and absolute, as it cannot be confined either for causes or persons within any bounds." (a) But the theory that the legislative authority of Parliament extends not only over the United Kingdom, but over all colonies and overseas possessions of the Crown has long been modified in practice in the case of the self-governing Dominions. By the Statute of Westminster, 1931, the Imperial Parliament formally recognized limitations on its powers over the Dominions.

The vast territories of British India, which had long been subject to the anomalous government of the East India Company, were transferred by statute to the Crown in 1858 and were thereafter under the immediate legislative authority of Parliament; the changes foreshadowed in the preamble to the Government of India Act, 1919, reached a further stage in the Act of 1935 (b). In 1867, the Dominion of Canada, in 1900 the Commonwealth of Australia, in 1909 the Union of South Africa, and in 1922 the Irish Free State, now Eire (c), were constituted by statute. Recourse was also had to a statute in the establishment of a parliament for Northern Ireland (d).

As regards the Crown Colonies, it is now the usual practice for the Crown, by Order in Council or Letters Patent, to lay down the form of government, and the powers conferred upon it. In the case of the Crown Colonies, however, Parliament still retains its power of legislation and some colonial constitutions are dependent upon Acts of Parliament.

Thus, for instance, constitutions have in recent years been conferred on Ceylon by prerogative Order in Council, on Malta and Fiji by Letters Patent, and on British Guiana and Aden by Orders in Council under Acts of Parliament (the British Guiana Act, 1928, and s. 288 of the Government of India Act, 1935), while the constitution of the Leeward Islands Colony is deter-

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(a) 4 Co. Inst. 36.

(b) See also the parallel Government of Burma Act, 1935.

(c) See also H. C. 142 (1905) for the various methods by which representative institutions have been conferred upon the possessions of the Crown.

(d) Government of Ireland Act, 1920, confined to Northern Ireland by the Irish Free State (Consequential Provisions) Act, 1922.



mined by an Act of Parliament (the Leeward Islands Act, 1871) subject to amendment by local legislation.

The legislative authority of Parliament also extends over Protectorates and Mandated Territories. In practice, Parliament has rarely legislated for them directly, but their government is dependent upon the Foreign Jurisdiction Act, 1890.

#### THE PROVISIONS OF THE STATUTE OF WESTMINSTER, 1931

Certain well-understood conventions regarding legislation by the United Kingdom Parliament with reference to a self-governing Dominion were examined by the Imperial Conference in 1926 and thereafter became crystallized in statutory form. The Conference of 1926 declared that the self-governing Dominions were

“autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations.” (Cmd. 2768.)

It recommended that a further conference should examine and report upon the operation of Dominion legislation and in particular upon the disallowance of such legislation and the arrangements for reserving it for His Majesty's assent, the extra-territorial effect of Dominion legislation, the application of the Colonial Laws Validity Act, 1865 (enacted to deal with problems of repugnancy between the laws of a colonial legislature and the law of the United Kingdom) and, lastly, certain provisions of merchant shipping law. The Conference on the Operation of Dominion Legislation met accordingly and reported in 1929 (e); its conclusions were adopted with modifications by the Imperial Conference of 1930 (f), and eventually received statutory confirmation in the Statute of Westminster in 1931. The recitals to the Statute embody these stages of agreement and declare in particular that “inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the succession to the throne or the Royal style and titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.” The Statute defines “Dominion” as meaning Canada, Australia, New Zealand, South Africa, the Irish Free State (now Eire) and Newfoundland (g). Its second section declares that the Colonial Laws Validity Act shall not apply to any law thereafter made by a Dominion; its third recognizes the full power of a Dominion Parliament to legislate with extra-territorial effect; its fourth makes clear that no Act of the Parliament of the United Kingdom thereafter passed shall

(e) Cmd. 3479.

(f) Cmd. 3717.

(g) The status of Newfoundland was placed in abeyance by the Newfoundland Act, 1933, for reasons set out in the documents scheduled thereto.

extend to a Dominion as part of its law unless the Act expressly declares that the Dominion has requested and consented to the enactment; its fifth deals with merchant shipping laws (*h*). To this summary of the main provisions of the Statute material to the present context, it may be added that it still remains the fact that Canada has no power to amend her Constitution Act without legislation by the United Kingdom Parliament. It is in regard to Canada that the effect of s. 4 of the Statute of Westminster has been visible, the British North America Acts of 1940 and 1943 having amended that constitution by Acts of the United Kingdom which duly recite the request and consent of the Dominion (*i*).

### EXTENT OF THE PREROGATIVES OF THE CROWN IN REFERENCE TO PARLIAMENT

Apart from the authority of Parliament collectively, which has been considered above, the laws and usage of the constitution have assigned peculiar powers, rights and privileges to each of its branches, in connection with their joint legislative functions.

It is by the act of the Crown alone that Parliament can be assembled.

The only occasions on which the Lords and Commons have met by their own authority were previously to the restoration of King Charles II., and at the Revolution in 1688. The first Act of Charles the Second's reign declared the Lords and Commons to be the two Houses of Parliament, notwithstanding the irregular manner in which they had been assembled; and all their Acts were confirmed by the succeeding Parliament summoned by the King, which however qualified the confirmation of them, by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner, the first Act of the reign of William and Mary declared the convention of Lords and Commons to be the two Houses of Parliament, as if they had been summoned according to the usual form; and the succeeding Parliament recognized the legality of their Acts.

### ANNUAL MEETING OF PARLIAMENT

Although the king may determine the period for calling Parliaments, his prerogative is restrained within certain limits; as he is bound by statute (*j*) to issue writs within three years after the determination of a Parliament; while the practice of providing money for the public service by annual enactments, renders it compulsory upon him to meet Parliament every year.

The annual meeting of Parliament, now placed beyond the power of the Crown by a system of finance rather than by distinct enactment, had, in fact, been the law of England from very early times. By the statute 4 Edw. 3, c. 14, "it is accorded that Parliament shall be holden every year once, [and]

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(*h*) Ss. 2-6 of the Statute of Westminster are, by s. 10, excluded from application to Australia, New Zealand or Newfoundland until those Dominions adopt them. Their adoption by Australia led to changes in the Army Act and Air Force Act in 1943; see Army and Air Force (Annual) Act, 1943.

(*i*) 3 & 4 Geo. 6, c. 36 (unemployment insurance); 6 & 7 Geo. 6, c. 30 (postponement of redistribution of seats).

(*j*) 16 Cha. 2, c. 1, and 6 & 7 Will. & Mary, c. 2.

[or] more often if need be." And again, in the 36th Edw. 3, c. 10, it was granted "for redress of divers mischiefs and grievances which daily happen [a Parliament shall be holden or] be the Parliament holden *every year*, as another time was ordained by statute." (Stat. of the Realm, vol. i, p. 374).

It is well known that by extending the words, "if need be," to the whole sentence instead of to the last part only, to which they are obviously limited, the kings of England constantly disregarded these laws. It is impossible, however, for any words to be more distinct than those of the 36th Edward 3, and it is plain from many records that they were rightly understood at the time. In 1376, the Commons petitioned Edward III to establish, by statute, that a Parliament should be held each year; to which the king replied, "In regard to a Parliament each year, there *are* statutes and ordinances made, which should be duly maintained and kept." To a similar petition in 1377, Richard II answered, "So far as relates to the holding of Parliament each year, let the statutes thereupon be kept and observed; and as for the place of meeting, the king will therein do his pleasure." In the following year the king declared that he had summoned Parliament, because at the prayer of the Lords and Commons it had been ordained and agreed that Parliament should be held each year (*k*).

In the preamble of the Act 16 Chas. 1, c. 1, it was also distinctly affirmed, that "by the laws and statutes of this realm, Parliament ought to be holden at least once every year for the redress of grievances: but the appointment of the time and place of the holding thereof hath always belonged, as it ought, to his majesty and his royal progenitors" (*l*). Yet by the 16 Cha. 2, c. 1, a recognition of these ancient laws was withheld: for the Act of Charles I was repealed as "derogatory of his majesty's just rights and prerogative;" and the statutes of Edward III were incorrectly construed to signify no more than that "Parliaments are to be held very often." All these statutes, however, were repealed, by implication, by this Act, and also by the 6 & 7 Will. & Mary, c. 2, which declares and enacts "that from henceforth Parliament shall be holden once in three years, at the least."

#### SUMMONS

The Parliament is summoned by the King's writ or letter issued out of Chancery, by advice of the privy council. By the 7 & 8 Will. 3, c. 25, it was required that there shall be forty days (*m*) between the teste and the return of the writ of summons; and after the union with Scotland this period was extended to fifty days (*n*), such being the period assigned in the case of the first Parliament of Great Britain after the Union. The Meeting of Parliament Act, 1852, enacted that the time between the proclamation and the meeting of Parliament might be any time not less than thirty-five days (*o*); and this period was reduced to twenty clear

(*k*) By an ordinance in the 5th Edward 2 (1312), the object of the law had been more clearly explained, viz.: "Que le roi tiegne Parlement une foiz p an', ou deu foiz si mestier soit." 1 Rot. Parl. 285; 2 *ibid.* 355; 3 *ibid.* 23, 32.

(*l*) "Act for preventing of inconvenience happening from long intermission of Parliaments."

(*m*) Forty days were assigned for the period of the summons by the great charter of King John, in which are these words: "Faciemus summoneri . . . ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum."

(*n*) See 22nd Art. of Union, Union with Scotland Act, 1706; 2 Hatsell, 290.

(*o*) This period was specially reduced to twenty-eight days by the Registration Act, 1868, s. 11, in regard to the dissolution of 1868, in order to ensure an earlier meeting of the new Parliament.

days by s. 21 (3) of the Representation of the People Act, 1918. The meeting of Parliament may be deferred, however, by proclamation, from the day to which it shall stand summoned to any further day, not being less than fourteen days from the date of the proclamation, under the Prorogation Act, 1867 (*p*). The writ of summons has always named the day and place of meeting (*q*), without which the requisition to meet would be imperfect and nugatory.

#### DEMISE OF THE CROWN

The demise of the Crown is the only contingency upon which Parliament is required to meet without summons in the usual form. By the Succession to the Crown Act, 1707, on the demise of the Crown, Parliament, if sitting, is immediately to proceed to act; and, if separated by adjournment or prorogation, is immediately to meet and sit. In such circumstances, Parliament has met on Sunday (*r*). By the Meeting of Parliament Act, 1797, in case of the demise of the Crown after the dissolution or expiration of a Parliament, and before the day appointed by the writs of summons for assembling a new Parliament, the last preceding Parliament is immediately to convene and sit at Westminster, and be a Parliament for six months, subject in the meantime to prorogation or dissolution. In the event of another demise of the Crown during this interval of six months, before the dissolution of the Parliament thus revived, or before the meeting of a new Parliament, it is to convene again and sit immediately, as before, and to be a Parliament for six months from the date of such demise, subject, in the same manner, to prorogation or dissolution. If the demise of the Crown should occur on the day appointed by the writs of summons for the assembling of a new Parliament, or after that day and before it has met and sat, the new Parliament is immediately to convene and sit. By the Representation of the People Act, 1867, s. 51, the Parliament in being at the demise of the Crown continues as long as it would otherwise have done.

#### CAUSES OF SUMMONS

As the king appoints the time and place of meeting, so also at the commencement of every session he declares to both Houses the causes of summons, by a speech delivered to them in the House of Lords by himself in person or by Commissioners appointed by him. Until he has done this, neither House can proceed with any business; but the causes of summons, as declared from the throne, do not bind Parliament to consider them alone, or to proceed at once to the consideration of any of them (see p. 275).

(*p*) The power of accelerating the meeting of Parliament for despatch of business by proclamation, given by the Meeting of Parliament Act, 1797, as amended (see p. 264), applies only to a meeting of Parliament pursuant to a prorogation.

(*q*) When Parliament temporarily sought other accommodation during the 1939 war, its place of sitting was always within Westminster, and therefore within the terms of its summons.

(*r*) Queen Anne, C. J. (1714-18) 3; Geo. 2, *ibid.* (1757-61) 929, 933; Geo. 3, *ibid.* (1820) 82, 89. For other occasions of the demise of the Crown, see *ibid.* (1722-27) 866 (Geo. 1); *ibid.* (1830) 589 (Geo. 4); *ibid.* (1837) 490 (Will. 4); *ibid.* (1901) 5 (Queen Victoria); *ibid.* (1910) 147 (Edw. 7); *ibid.* (1935-36) 50 (Geo. 5); *ibid.* (1936-37) 59 (Edw. 8).

On two occasions, during the illness of George III, the name and authority of the Crown were used for the purpose of opening the Parliament, when the sovereign was personally incapable of exercising his constitutional functions. On the first occasion, Parliament had been prorogued till the 20th November, 1788, then to meet for the despatch of business. When Parliament assembled on that day, the king was under the care of his physicians, and unable to open Parliament, and declare the causes of summons. Both Houses, however, proceeded to consider the measures necessary for a regency; and on the 3rd February, 1789, Parliament was opened by a commission, to which the great seal had been affixed by the lord chancellor, without the authority of the king. Again, in 1810, Parliament stood prorogued till the 1st November, and met at a time when the king was incapable of issuing a commission. His illness continued, and on the 15th January, without any personal exercise of authority by the king, Parliament was formally opened, and the causes of summons were declared in virtue of a commission under the great seal, and "in his Majesty's name" (s). The illnesses of George V in 1928 and 1936 led (as its preamble explains) to the passing of the Regency Act in 1937, which provides for the appointment of a regent if the wife or husband of the sovereign, the Lord Chancellor, Speaker of the House of Commons, Lord Chief Justice and Master of the Rolls are satisfied, by medical and other evidence, of the sovereign's incapacity or satisfied by evidence that he is for some definite cause not available to perform the royal functions. The regent has no power to assent to a bill for changing the order of succession to the Crown or for repealing or altering the Act of 1706 for securing the Protestant religion and Presbyterian Church government (t).

#### PROROGATION AND ADJOURNMENT

Parliament, it has been seen, can only commence its deliberations at the time appointed by the king; neither can it continue them any longer than he pleases. He may prorogue Parliament by having his command signified, in his presence or by commission, by the Lord Chancellor or Speaker of the House of Lords, to both Houses, or by proclamation. The prorogation of Parliament from the day to which it stood summoned or prorogued to any further day, was effected before 1867 by a writ or commission under the great seal; but by the Prorogation Act, 1867, Parliament may be prorogued by the royal proclamation alone, except at the close of a session.

#### EFFECT OF A PROROGATION

The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons, and appeals before the House

(s) For a full statement of these proceedings, see May, *Const. Hist.* i. 118-144.

(t) The Act has been applied during the sovereign's absence from the country, e.g., in 1939. See also Regency Act, 1943.

of Lords (u). Every bill must therefore be renewed after a prorogation, as if it had never been introduced. As it is a rule that a bill of the same substance cannot be introduced in either House twice in the same session, a prorogation has been resorted to on three occasions to enable another bill to be brought in (see p. 555).

#### MEETING OF PARLIAMENT ACCELERATED OR DEFERRED BY PROCLAMATION

When Parliament stands prorogued to a certain day, the king may, by the Meeting of Parliament Act, 1797, as amended by the Meeting of Parliament Act, 1870, and s. 34 of the Parliament (Elections and Meeting) Act, 1943, issue a proclamation, giving notice of his intention that Parliament shall meet for the despatch of business on any day after the date of the proclamation (a), and Parliament then stands prorogued to that day, notwithstanding the previous prorogation (b). Parliament, notwithstanding a proclamation having been issued for its meeting, can also, under the Prorogation Act, 1867, and the Meeting of Parliament Act, 1870, be further prorogued, by proclamation, from the day to which it stands prorogued, to meet for despatch of business upon a further day not less than six days from the date of the proclamation (c). The Parliament (Elections and Meeting) Act, 1943, substituted "any day after the date of such proclamation" for "any day not being less than six days from the date of such proclamation."

#### MEETING OF PARLIAMENT ACCELERATED PURSUANT TO STATUTE

Various Acts (d) have provided that whenever the Crown shall cause the militia to be embodied, or the army reserve or militia reserve or air force reserve to be called out on permanent service, or the Territorial Force to be embodied, when Parliament stands prorogued or adjourned for more than ten days, the king shall issue a proclamation for the meeting of Parliament within ten days (e). The Emergency Powers Act, 1920, also requires that where a proclamation declaring that a state of emergency exists has been made, the occasion thereof is to be communicated forthwith to Parliament and if Parliament is separated by an adjournment or prorogation which will not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days (f).

(u) 2 Hatsell, 335. See also statute 45, Geo. 3, c. 117, to continue proceedings in the House of Lords against Mr. Justice Fox over the prorogation. See also an exception regarding documents laid before Parliament, p. 256; appeals (House of Lords), p. 35; proceedings in certain cases on private and provisional order bills, p. 957; and on a public bill, p. 556, n.; *ibid.* (k).

(a) The 1797 Act said not less than fourteen days from the date of the proclamation; the 1870 Act substituted six days for fourteen.

(b) For instances see C. J. (1798-99) 745; *ibid.* (1799-1800) 3; *ibid.* (1900) 404; *ibid.* (1921) 402.

(c) For instances see C. J. (1887) 2; *ibid.* (1922) 2.

(d) The Reserve Forces Act, 1882, s. 13, and Military Act, 1882, s. 19; Territorial and Reserve Forces Act, 1907, s. 17 (2). S. R. & O., 1918 (No. 1064) I. p. 75. For the power of Parliament to present an address to the Crown against the embodiment of the Territorial Force, see Territorial and Reserve Forces Act, 1907, s. 17 (1).

(e) See C. J. (1899) 428. See also C. J. (1792) 1092.

(f) A proclamation declaring a state of emergency having been made on the 31st March, 1921, when the Lords stood adjourned from the 24th March till the 7th April, the Lords met on the 4th April, pursuant to a proclamation dated 1st April, L. J. (1921) 95, H. L. Deb. (1921) 44, c. 823, C. J. (1921) 77, 79, 81. For the proclamations in 1924 and 1926 see London Gazette, 1st April, 1924, and 25th August, 1926.

## MEETING FOR DESPATCH OF BUSINESS

When the king, by the advice of his privy council, has determined upon the prorogation of Parliament, a proclamation is issued, declaring that on a certain day Parliament will be prorogued until a day mentioned; and when it is intended that Parliament shall meet on that day for despatch of business, the proclamation states that Parliament will then "assemble and be holden for the despatch of divers urgent and important affairs." It was formerly customary to give forty days' notice, by proclamation, of a meeting of Parliament for despatch of business (g); but under the Meeting of Parliament Acts, 1797 and 1870, amended (as already mentioned) in 1943, Parliament can be assembled for that purpose upon any day after the date of the proclamation (h).

When Parliament has been dissolved and summoned for a certain day, or when it has been prorogued by commission to a certain day, it meets on that day for despatch of business, if not previously prorogued. without any proclamation for that purpose, the notice of such meeting being comprised in the proclamation relating to the dissolution and the writs then issued, or in the commission for proroguing Parliament respectively.

## ADJOURNMENT

Adjournment is solely in the power of each House respectively: though the pleasure of the Crown has occasionally been signified in person, by message, commission, or proclamation, that both Houses should adjourn; and in some cases such adjournments have scarcely differed from prorogations (i). But although no instance has occurred in which either House has refused to adjourn, the communication might be disregarded. Business has been transacted after the king's desire has been made known; and the question for adjournment has afterwards been put, in the ordinary manner, and determined after debate, amendment and division (j). The pleasure of the Crown was last signified on the 1st March, 1814 (k); and it is probable that the practice will not be revived.

A power of interfering with adjournments in certain cases has been conceded to the Crown by statute. The Meeting of Parliament Act, 1799, amended by the Meeting of Parliament Act, 1870, and the Parliament (Elections and Meeting) Act, 1943, enacts that when both Houses of Parliament stand adjourned for more than fourteen days, the king may issue a proclamation, with the advice of his privy council, declaring that the Parliament shall meet on any day after the date of the proclamation; and the Houses of Parliament then stand adjourned to the day and place declared in the proclamation; and all the orders which may have been

(g) 2 Hatsell, 290; 3 Chatham Corr., 126, n.

(h) For instance see C. J. (1878) 2.

(i) Adjournment by royal commission; C. J. (1547-1628) 639, Rapin, ii. 205; C. J. (1667-87) 158, 423, 426, 427, etc.; Marvell, i. 337, 343, 346, 356.

(j) 2 Hatsell, 312, 316, 317; C. J. (1547-1628) 807, 808, 809; *ibid.* (1688-93) 694; *ibid.* (1711-14) 26, 275. In 1799, *ibid.* (1799-1800) 49; 34 Parl. Hist. 1196; Colchester, i. 192.

(k) L. J. (1813-14) 747, C. J. (1813-14) 132.

made by either House, and appointed for the original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

## DISSOLUTION

The king may also close the existence of Parliament by a dissolution, but is not entirely free to define the duration of a Parliament. Before the Triennial Act, 1694, there was no constitutional limit to the continuance of a Parliament but the will of the Crown. Under the Septennial Act, 1715, it ceased to exist after seven years from the day on which, by the writ of summons, it was appointed to meet, a period which was reduced to five years by the Parliament Act, 1911. Two great wars have made it necessary to prolong Parliaments for more than the five-year period prescribed by the Act of 1911 (*l*). Before the Revolution of 1688, a Parliament was dissolved by the demise of the Crown; but by the 7 & 8 Will. 3, c. 15, and by the Succession to the Crown Act, 1707, a Parliament was determined six months after the demise of the Crown (*m*) (see p. 29), and so the law continued until, by s. 51 of the Representation of the People Act of 1867, it was provided that the Parliament in being, at any future demise of the Crown, shall not be determined by such demise, but shall continue as long as it would have otherwise continued, unless dissolved by the Crown.

Parliament is usually dissolved by proclamation under the great seal, after having been prorogued to a certain day, but such a proclamation has been issued at a time when both Houses stood adjourned (*n*). This proclamation is issued by the king, with the advice of his privy council; and announces that the king has given order to the Lord Chancellor of Great Britain and the Governor of Northern Ireland to issue out writs in due form, and according to law, for calling a new Parliament; and that the writs are to be returnable in due course of law.

Since the dissolution of the 28th March, 1681, by Charles II, the sovereign had not dissolved Parliament in person until the 10th June, 1818, when it was dissolved by the Prince Regent in person. Parliament has not since been dissolved in that form; but proceedings not very dissimilar have occurred in recent times. On the 22nd April, 1831, William IV, having come down to prorogue Parliament, said, "I have come to meet you for the purpose of proroguing Parliament, with a view to its *immediate dissolution*;" and Parliament was dissolved by proclamation on the following day. On the 17th July, 1837, Parliament was prorogued and dissolved on the same day (*o*). On the 23rd July, 1847,

(*l*) The duration of the parliament which began on 31st January, 1911, was extended to eight years by the Parliament and Registration Act, 1916, s. 1 (1), the Parliament and Local Elections Act, 1916, s. 1, and the Parliament and Local Elections Act, 1918, s. 1. The duration of the parliament which began on 26th November, 1935, was extended to ten years by the Prolongation of Parliament Acts of 1940, 1941, 1942, 1943 and 1944. See also the Parliament and Local Elections Act, 1916, s. 3, for a conditional limitation of the duration of a parliament.

(*m*) Even the privy council expired at the demise of the Crown, and its members were reappointed in the new reign, and Queen Anne omitted the names of the Whig chiefs, Somers, Halifax, and Orford. Lord Stanhope, *Reign of Anne*, p. 44.

(*n*) C. J. (1922) 330.

(*o*) C. J. (1818) 427; *ibid.* (1830-31) 517; *ibid.* (1837) 671; *ibid.* (1837-8) 3.



Queen Victoria, in proroguing Parliament, announced her intention immediately to dissolve it; and it was accordingly dissolved by proclamation on the same day, and the writs were despatched by that evening's post (*p*). This course is now the ordinary (*q*), but not the invariable (*r*), practice.

#### ASSEMBLING OF PARLIAMENT AFTER DISSOLUTION

Subject to the statutory period of twenty clear days between the proclamation calling a Parliament and its meeting (see p. 262), the interval between a dissolution and the assembling of the new Parliament varies according to the season of the year, the state of public business and the political conditions under which an appeal to the people may have become necessary. When the session has been concluded, and no question of ministerial confidence or responsibility is at issue, the recess is generally continued, by prorogations, until the usual time for the meeting of Parliament.

In addition to these several powers of calling a Parliament, appointing its meeting, directing the commencement of its proceedings, determining them from time to time by prorogation, and finally of dissolving it altogether, the Crown has other parliamentary powers, which will hereafter be noticed in treating of the functions of the two Houses.

#### RIGHTS AND FUNCTIONS OF THE HOUSE OF LORDS

Peers of the realm enjoy rights and exercise functions in five distinct characters: First, they possess individually, titles of honour which give them rank and precedence; secondly, they are, individually, hereditary counsellors of the Crown; thirdly, they are, collectively, together with the lords spiritual, when not assembled in Parliament, the permanent council of the Crown; fourthly, they are, collectively, together with the lords spiritual, when assembled in Parliament, a court of judicature; and lastly, they are, conjointly with the lords spiritual and the Commons, in Parliament assembled, the legislative assembly of the kingdom, by whose advice, consent and authority, with the sanction of the Crown, laws are made (*s*).

#### HOUSE OF LORDS AS A COURT OF JUDICATURE

The most distinguishing characteristic of the Lords is their judicature, of which they exercise several kinds. They have a judicature in the trial of peers (see p. 36), and another in claims of peerage and offices of

(*p*) C. J. (1847) 960; *ibid.* (1847-8) 3.

(*q*) 21st March, 1857; 23rd April, 1859; 6th July, 1865; 26th January, 1874; 24th March, 1880; 28th June, 1892; 28th November, 1910; 16th November, 1923; 9th October, 1924; 10th May, 1929; 7th October, 1931; 25th October, 1935; 15th June, 1945.

(*r*) 1859, prorogation, 19th April, proclamation, 23rd April; 1886, prorogation, 25th June, proclamation, 26th June; 1895, prorogation, 6th July, proclamation, 8th July; 1900, prorogation, 8th August, proclamation, 17th September; 1905, prorogation, 11th August, further prorogations, 24th October and 11th December, proclamation, the government having resigned in the interval, 8th January, 1906; 1909, prorogation, 3rd December, proclamation, 10th January, 1910; 1918, prorogation, 21st November, proclamation, 25th November.

(*s*) 1st Rep. Dignity of Peer, 14. Compare, however, p. 8, *n.* (*o*).

honour, under references from the Crown, but not otherwise (*t*). Since the union with Scotland, they have also had a judicature for controverted elections of the sixteen representative peers of Scotland (*u*). By the Act of Union with Ireland, 1800, all questions touching the rotation or election of lords spiritual or temporal of Ireland were to be decided by the House of Lords (*a*). Part of this judicature was superseded in 1869, when Irish Bishops ceased to have seats in Parliament; the rest is disappearing since there is now no Lord Chancellor of Ireland to whom the writs for election would be issued. In addition to these special cases, the Lords have a general judicature, as a supreme court of appeal from other courts of justice. This high judicial office has been retained by them as the ancient *concilium regis*, which, assisted by the judges, and with the assent of the king, administered justice in the early periods of English law (*b*). Their appellate jurisdiction would also appear to have received statutory confirmation from the Act, 14 Edw. 3, c. 5. In the seventeenth century they assumed a jurisdiction, in many points, which has since been abandoned (*c*). They claimed an original jurisdiction in civil causes, which was resisted by the Commons, and has not been enforced for the last century and a half. They claimed an original jurisdiction over crimes, without impeachment by the Commons, but that claim was also abandoned (*d*). Their claim to an appellate jurisdiction over causes in equity, on petition to themselves, without reference from the Crown, was exercised from the reign of Charles I onwards, notwithstanding the resistance of the Commons in 1675 (*e*). They had a jurisdiction over causes brought, on writs of error, from the courts of law, originally derived from the Crown, and confirmed by statute (*f*), and to hear appeals from courts of equity. In 1873, indeed, their ancient appellate jurisdiction was surrendered by the Judicature Act; but before that Act came into operation this provision was repealed (*g*); their jurisdiction was restored and defined, while their efficiency as a court of appeal was increased by the addition of the Lords of Appeal in Ordinary (see pp. 11-12).

*Power to sit as a court during prorogation and dissolution.*—In 1876 statutory provision was made for the hearing and determining of appeals during Prorogation and Dissolution (*h*):—

(i) At the close of a session, the House may appoint a day, irrespective of the session of Parliament, for meeting for the purpose of hearing and

(*t*) See Knowles' case, 12 State Tr. 1167-1207; 1, Ld. Raym. 10; 2 Salk. 509; Carth. 297; Campbell, Ch. Just. ii. 148; Lord Campbell's Speeches, 326; but see debates and proceedings upon the Wensleydale Life Peerage, 1856, Parl. Deb. (1856) 140, c. 263, 508, 591, 898, 977, 1022, 1121, 1152, 1289.

(*u*) Acts of the Parl. of Scotland, 5 Anne, c. 8; 6 Anne, c. 23; the Representative Peers (Scotland) Act, 1847.

(*a*) 4th Art. of Union; L. J. (1857) 289, 295, 329, etc.

(*b*) Hale, Jurisd. Lords, c. 14; Barrington on the Statutes, 244.

(*c*) See 6 State Tr. 711; 4 Parl. Hist. 431, 443; 3 Hatsell, 336.

(*d*) C. J. (1660-67) 38.

(*e*) See 6 State Tr. 1121.

(*f*) 27 Eliz. c. 8; Sugden, 2.

(*g*) Supreme Court of Judicature (Commencement) Act, 1874.

(*h*) Appellate Jurisdiction Act, 1876, ss. 8, 9; see also Appellate Jurisdiction Act 1887, L. J. (1887) 451, etc.

determining appeals, and empower the Appeal Committee to meet and appoint their own chairman. These powers cover any prorogation,

(ii) During Dissolution the Lords of Appeal may hear and determine appeals in the name of the House of Lords, under authority given by His Majesty under his Sign Manual, as if their sittings were a continuation of the sittings of the House of Lords.

*Constitution of Court of Appeal.*—An appeal cannot be heard or determined unless there are present not less than three of the following persons, designated Lords of Appeal: the Lord Chancellor, the Lords of Appeal in Ordinary and any Peer who holds or has held any of the following high judicial offices:

- Lord Chancellor of Great Britain;
- Member of the Judicial Committee of the Privy Council;
- Lord of Appeal in Ordinary;
- Judge of the Supreme Court of England or Northern Ireland or of the Court of Session in Scotland.

*Appellate Jurisdiction.*—An appeal now lies to the House of Lords,

- (1) from any order or judgment of the Court of Appeal, but only by leave of that Court or of the House of Lords (i);
- (2) from any order or judgment of any Court in Scotland or Northern Ireland from which error or appeal lay on or before November 1, 1876 (j);
- (3) from a decision of the Courts of Criminal Appeal in England or Northern Ireland on the certificate of the Attorney-General (k);
- (4) from a decision of the Railway and Canal Commissioners on a question of the valuation of railways for rating (l).

But appeals in ecclesiastical, maritime or prize causes, and colonial appeals, both at law and in equity, are determined by the Privy Council. The powers which are incident to the House of Lords as a court of record will claim attention elsewhere (see p. 89).

#### TRIAL OF PEERS

**Crimes for which Peers are tried by their Peers.**—At common law, the only crimes for which a peer is to be tried by his peers are treason, felony, misprision of treason, and misprision of felony; and the statutes which give such trial have reference to the same offences, either at common law or created by statute. During the sitting of Parliament, they are tried by the House of Peers; or, more properly, before the court of our lord the King in Parliament (m), presided over by the lord high steward appointed by commission under the great

(i) Administration of Justice (Appeals) Act, 1934.

(j) Appellate Jurisdiction Act, 1876, s. 3; Supreme Court of Judicature (Ireland) Act, 1877, s. 86. As to appeals from the Court of Appeal in Northern Ireland, see Government of Ireland Act, 1920, as amended by Irish Free State (Consequential Provisions) Act, 1922, s. 6 (3).

(k) Criminal Appeal Act, 1907, s. 1 (E); Criminal Appeal (Northern Ireland) Act, 1930, s. 6 (N.I.).

(l) Railways (Valuation for Rating) Act, 1930.

(m) Fost. 141.

seal (*n*): but at other times, they may be tried before the court of the lord high steward (*o*), to which, under the Treason Act, 1695, all the peers must be summoned. For misdemeanours, and in cases of *præmunire*, it has been held that peers are to be tried in the same way as commoners, by a jury (*p*).

**Indictments against Peers.**—By the Felony Act, 1841, it is enacted that every lord of Parliament, or peer of this realm, having place and voice in Parliament, against whom any indictment may be found, shall plead to such indictment, and shall, upon conviction, be liable to the same punishment as any other of his Majesty's subjects. Indictments are found, in the usual manner, against peers charged with treason or felony: but are certified into the House of Lords by *certiorari*, whereupon the proceedings are immediately taken up by that House. It is usual, in such cases, to appoint a committee to inspect the journals upon former trials of peers, and to consider the proper methods of proceeding; and if the accused peer be not already in custody, an order is forthwith made for the gentleman usher of the Black Rod to attach him, and bring him to the bar of the House (*q*).

**Limitation of Trial of Peers in Full Parliament.**—By standing order No. LXV, it was resolved by the Lords, "That it is the ancient right of the peers of England to be tried only in full Parliament for any capital offences; but this order shall not be understood or construed to extend to any appeal of murder or other felony, to be brought against any peer or peers."

**Vote of Lord High Steward.**—When a peer is tried in full Parliament, the lord high steward votes with the other peers (*r*); but when the trial is before the court of the lord high steward, he is only the judge to give direction in point of law; and the verdict is given by the lords-triers (*s*).

**Spiritual Lords.**—In the trial of peers, the position of the bishops is at once anomalous and ill defined. Not being themselves ennobled in blood, they are "not of trial by nobility," but would be tried for a capital offence by a jury, like other commoners (*t*). Though not entitled to a trial by the peers, they claim, and to a certain extent exercise, the right of sitting, as judges, upon the trial of peers in full Parliament. When a peer is to be tried in full Parliament, the bishops, as lords of Parliament, are entitled to take part in the proceedings of the House of Lords, of which they are members, and they are always summoned to attend with the other peers (*u*). They are restrained from the full exercise of judicial functions by their ecclesiastical obligations. By the canons of the

(*n*) After the trial, his grace breaks the white staff, and declares the commission dissolved, L. J. (1901) 290.

(*o*) See 4 Bl. Com. 260; trial of Lord Delamere, 11 State Tr. 509; 2 Macaulay, Hist. 38.

(*p*) Rex. v. Lord Vaux, 1 Bulst. 197.

(*q*) Parl. Deb. (1847-8) 99, c. 1050 (23rd June, 1848); L. J. (1847-8) 415; *ibid.* (1901) 232, 246; *ibid.* (1934-35) 392, 394, 395.

(*r*) E.g., L. J. (1935-36) 37.

(*s*) Campbell, Lives, iii. 557, *n*.

(*t*) S. O. No. LXVI; 1 Co. Inst. 31; 3 Co. Inst. 30; Gibson, Codex, 133; Gilb. C. P. 80; 1 Burn, Eccl. Law, 221, *et seq.*; Trials of Bishop Fisher and Archbishop Cranmer, 1 State Tr. 395, 767.

(*u*) L. J. (1841) 16; Post. 247. Spiritual lords are not summoned to attend the court of the lord high steward

Church (a), they are prohibited from voting in cases of blood; and by the Constitutions of Clarendon, it was declared, "That bishops, like other peers (or barons), ought to take part in trials in the king's court, or council, with the peers, until it comes to a question of the loss of life or limb."

*Spiritual Lords Withdraw.*—It was declared by the Lords, on the impeachment of the Earl of Danby, "That the lords spiritual have a right to stay and sit in court in capital cases, till the court proceed to the vote of guilty or not guilty." And in accordance with this rule, the bishops are present during the trial of peers in Parliament, but ask leave to be absent from the judgment; which being agreed to, they withdraw, in compliance with the canons of the Church, but enter a protestation, "saving to themselves and their successors, all such rights in judicature as they have by law, and by right ought to have (b)."

**Representative Peers of Scotland and Ireland.**—By the 23rd article of the Act of Union with Scotland, it is declared that the sixteen representative peers shall have the right of sitting upon the trial of peers; "and in case of the trial of any peer in time of adjournment or prorogation of Parliament, they shall be summoned in the same manner, and have the same powers and privileges at such trial, as any other peers of Great Britain;" and in case there shall be any trials of peers when there is no Parliament in being, the sixteen peers who sat in the last Parliament shall be summoned in the same manner. All peers of Scotland enjoy the privilege of being tried as peers of Great Britain.

By the 4th article of the Act of Union with Ireland, it was enacted that "the (representative) lords spiritual and temporal respectively, on the part of Ireland, shall have the same rights in respect of their sitting and voting upon the trial of peers, as the lords spiritual and temporal respectively on the part of Great Britain;" and that all the peers of Ireland shall be sued and tried as peers, but shall not have the right of sitting on the trial of peers.

Following the trial of Lord de Clifford on 12th December, 1936 (see L.J. (1934-5) 386, 392, 394, 395, *ibid.* (1935-6) 24, 26, 27, 30, 31 and 33) a resolution was agreed to by the Lords "That the present system of Trial of Peers by Peers has outlived its usefulness" (L.J. (1935-6) 73) but a Bill to abolish the privilege, which was later introduced and passed by the Lords, did not reach the statute book (*ibid.* 93, 198).

## ACTS OF ATTAINDER AND IMPEACHMENTS

In passing Acts of attainder and of pains and penalties, the judicature of the entire Parliament is exercised (see p. 39), and there is another high parliamentary judicature in which both Houses also have a share. In impeachments, the Commons, as a great representative inquest of

(a) Gibson, Codex, 124, 125; and see Burnet, ii. 216; and 3 Stillingfleet, Works, 820.

(b) 11 Henry 2 (1164); 1 Wilkins' Concilia, 435; L.J. (1675-81) 571; *ibid.* (1746-52) 76; *ibid.* (1841) 43; *ibid.* (1901) 290; *ibid.* (1935-36) 36.

the nation, first find the crime, and then, as prosecutors, support their charge before the Lords; while the Lords, exercising at once the functions of a high court of justice and of a jury, try and also adjudicate upon the charge preferred.

#### IMPEACHMENT BY THE COMMONS

Impeachment by the Commons, for high crimes and misdemeanours beyond the reach of the law, or which no other authority in the state will prosecute, might still be regarded as an ultimate safeguard of public liberty, though it has not been employed since the beginning of the nineteenth century.

Impeachments were directed in particular against Ministers of the Crown, but the growth of the doctrine of collective cabinet responsibility, and of resignation of the cabinet following a successful vote of censure against a minister, resulted in the decline of impeachments in modern times.

Thus between 1620 and the Revolution of 1688, about forty cases of impeachment occurred; in the reigns of William III, Queen Anne and George I, fifteen; and in the reign of George II one case, that of Lord Lovat, 1746. The last cases were those of Warren Hastings, 1788, and Lord Melville, 1805; see also Hallam i, 357.

By the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes whatever (c) although impeachments have generally been reserved for extraordinary crimes and extraordinary offenders.

#### BILLS OF ATTAINDER

The proceedings of Parliament, in passing bills of attainder and of pains and penalties, do not vary from those adopted in regard to other bills; though the parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses before both Houses.

Whenever a fitting occasion arises for its exercise (d), a bill of attainder is, undoubtedly, the highest form of parliamentary judicature, though it has not been employed since the eighteenth century.

In impeachments, the Commons are but accusers and advocates; while the Lords alone are judges of the crime. On the other hand, in passing bills of attainder, the Commons commit themselves by no accusation, nor are their powers directed against the offender: but they are judges of equal jurisdiction, and with the same responsibility, as the Lords; and the accused can only be condemned by the united judgment of the Crown, the Lords, and the Commons.

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(c) For a full description of the procedure of impeachment, with references to the Journals and other authorities, see Hatsell, vol. iv.

(d) For examples and observations see Hatsell, vol. iv., pp. 85, 235 and 323; for examples of bills of pains and penalties, see *ibid.*, pp. 100, 244, 331.

Bills of attainder generally commence in the House of Lords. In 1722, the bill of pains and penalties against the Bishop of Rochester, was brought into the Commons, C. J. (1722-27) 165.

### PRINCIPAL POWER OF THE COMMONS

The most important power vested in any branch of the legislature is the right of imposing taxes upon the people and of voting money for the exigencies of the public service. The exercise of this right by the Commons is practically a law for the annual meeting of Parliament for redress of grievances ; and it may also be said to give to the Commons the chief authority in the state. In all countries the public purse is one of the main instruments of political power : but with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure is one of absolute supremacy.

Another important aspect of the authority of the Commons is considered below, in relation to the privilege of determining the constitution of their House (see p. 176).

## CHAPTER III

# GENERAL VIEW OF THE PRIVILEGE OF PARLIAMENT

### WHAT CONSTITUTES PRIVILEGE

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.

"The privileges of individual members of the House of Lords may be distinguished from the privileges of individual members of the House of Commons; both again have common privileges as members of the Parliament; and the Lords have special privileges as peers, distinct from those which they have as members of a House co-ordinate with the House of Commons." (Stubbs Const. Hist., iii (4th ed.) p. 504).

The particular privileges of the Commons have been defined as:—"The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords" (a).

**Distinction between function and Privilege proper.**—The distinction between privilege and function is not always apparent (b). Thus the financial powers of the House of Commons, including rights both against the Crown and against the Lords, are sometimes referred to as financial privileges; and it is often a matter of individual choice whether a particular financial right is called a privilege or a constitutional power. Financial privilege is more conveniently treated as a special power of the House of Commons, and dealt with in Chapter XXVIII. It is more convenient to reserve the term "privilege" to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions.

**Ancillary nature of Privilege**—A necessary means to fulfilment of functions.—The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers" (c). They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each

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(a) Redlich 1, p. 46.

(b) "The two Houses . . . each retained peculiarities of usage and exclusive rights in special provinces of work to which the names of prerogative or privilege might be given if those names were not otherwise appropriated." (Stubbs, iii, 4th ed., p. 503.)

(c) I Hatsell p. 1



House for the protection of its Members and the vindication of its own authority and dignity.

**Breach of privilege and "contempt."**—When any of these rights and immunities, both of the Members, individually, and of the assembly in its collective capacity, which are known by the general name of privileges, are disregarded or attacked by any individual or authority, the offence is called a breach of privilege, and is punishable under the law of Parliament. Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its Members. Such actions, though often called "breaches of privilege" are more properly distinguished as "contempts." The powers and procedure of each House in dealing with cases of contempt are treated in Chapters VII and VIII.

"The privileges of a legislative assembly would be entirely ineffectual to enable it to discharge its functions, if it had no power to punish offenders, to impose disciplinary regulations upon its members, or to enforce obedience to its commands." (Cushing, *Legislative Assemblies*, para. 532-3).

Except in one respect, the surviving privileges of the House of Lords and the House of Commons are justifiable on the same grounds of necessity, as the privileges enjoyed by legislative assemblies of the self-governing Dominions and certain British colonies (*d*), under the common law as a legal incident of their legislative authority. This exception is the power to punish for contempt. Since the decision of the Privy Council in *Kielley v. Carson* (*e*) it has been held that this power is inherent in the House of Lords and the House of Commons, not as a body with legislative functions, but as a descendant of the High Court of Parliament and by virtue of the *lex et consuetudo parliamenti*(*f*).

Such powers are essential to the authority of every legislature. The functions, privileges and disciplinary powers of a legislative body are thus closely connected. The privileges are the necessary complement of the functions, and the disciplinary powers of the privileges.

#### COLLECTIVE AND INDIVIDUAL PRIVILEGES OF EACH HOUSE AND OF MEMBERS OF EACH HOUSE

Certain rights and immunities, such as freedom from arrest or freedom of speech, belong primarily to the individual members of each House and only secondarily and indirectly to the House itself; but there are other rights and immunities, such as the power to punish for contempt

(*d*) For the limits of "common law" privileges of Dominion Parliaments, and the extent of privileges taken by dominion legislation, see Berriedale Keith, *Responsible Government in the Dominions* Vol. I (1928 ed.), 366 and 370.

(*e*) 4 Moore P.C. 63, overruling *Beaumont v. Barrett*, 1 Moore P.C. 59.

(*f*) This decision was followed by the Privy Council in *Fenton v. Hampton*, 1858 (Moore P.C. Reports), *Doyle v. Falconer* (1866), (4 Moore P.C. Reports); by the Supreme Court of Canada in *Woodworth's case*, 1878 (2 Canada Supreme Court Rep.). The doctrine is accepted that under the common law only such powers are inherent in a legislative assembly as are necessary to its existence and the proper exercise of its functions. Wider power must depend upon express grant by statute of constitutional power, as in the case of Victoria (1 Moore P.C. Rep. (n.s.) 511, 512 (*Dill v. Murphy*, 1864), and New South Wales (L.R. Appal (1908), 470-7 (*Hamitt v. Crick*)).

and the power to regulate its own constitution, which, being rather directed to the maintenance of its own collective authority than to the security of the individual members, may be said to belong primarily to each House as a collective body (*g*). This is a useful distinction, but fundamentally it is only as a means to the effective discharge of the functions of the House that individual privileges are enjoyed by its Members. The Commons, in their reasons offered at a conference with the Lords in the controversy arising from the case of *Shirley v. Fagg*, in asserting that privilege of Parliament belongs to every Member of the House of Commons, declared "that the reason of that Privilege is, that the Members of the House of Commons may freely attend the public affairs of that House, without disturbance or interruption" (*h*). The earliest occasion on which this reason was given was in the Commons Petition to Henry IV in 1404 (*i*).

#### ORIGIN OF PRIVILEGE

Privilege of members of the High Court of Parliament, like that of members of other royal courts, was originally part of the King's peace enjoyed by all the King's subjects, but in special measure by his servants.

Blackstone held that something akin to the privilege of freedom from arrest existed in the reign of Edward the Confessor, among whose laws is this precept, "*ad synodos venientibus, sive summoniti sint, sive per se quid agendum habuerint, sit summa pax*"; and so, too, in the old Gothic constitutions, "*Extenditur haec pax et securitas ad quatuordecim dies, convocato regni senatu.*" (1 Bl. Com. 165; Stiernhook, *de Jure Sueonum et Gothorum* (1672).)

As originally the weaker body, the Commons had a fiercer and more prolonged struggle for the assertion of their own privileges, not only against the Crown and the courts, but also against the Lords. What originated in the special protection of the King began to be claimed by the Commons as customary rights, and some of these claims in the course of repeated efforts to assert them hardened into legally recognised "privileges."

But the Commons having established their claim to privilege in the late fifteenth and in the sixteenth centuries, used it against the King in the seventeenth and—arbitrarily—against the people in the eighteenth century (*j*). Not until the nineteenth century was equilibrium reached and the limits of privilege prescribed and accepted by Parliament, the Crown and the Courts.

#### PRIVILEGES ENJOYED BY CUSTOM AND BY STATUTE

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded. The Lords have ever enjoyed them, simply because "they have place and voice in Parliament (*k*):" but

(*g*) See Cushing, *Legislative Assemblies*, para. 531.

(*h*) 20th May 1675, C. J. (1667-87) 342.

(*i*) R.P. iii, 541.

(*j*) See Holdsworth, *Hist. of English Law*, Book IV, pt. 1, c. 6.

(*k*) Hakewell, 82.

a practice has obtained with the Commons, that would appear to submit their privileges to the royal favour.

**Speaker's Petition.**—At the commencement of every Parliament it has been the custom for the Speaker,

"In the name, and on behalf of the Commons, to lay claim by humble petition to their ancient and undoubted (*l*) rights and privileges; particularly that their persons (their estates and servants (*m*)) may be free from arrests and all molestations; that they may enjoy liberty of speech in all their debates; may have access to his Majesty's royal person whenever occasion shall require; and that all their proceedings may receive from his Majesty the most favourable construction."

The Lord Chancellor replies to the Speaker's petition that, "His Majesty most readily confirms all the rights and privileges which have ever been granted to or conferred upon the Commons, by his Majesty or any of his royal predecessors (*n*)."

The practice of claiming these privileges developed gradually. In the reign of Henry IV, the only privilege claimed by the Speaker was for himself, that he might be allowed to inform the King of the mind of the Commons, and that if he made any error in doing so it might be corrected by reference to the House (3 Rot. Parl., 424, see also *ibid.* 425).

In 1536 there is a definite demand of access to the Crown, in 1541 comes the demand for freedom of speech (by Speaker Moyle, see Elsynge, 175-6), and in 1554 the three claims of freedom from arrest, freedom of speech, and of access, were first made together (D'Ewes Journal, pp. 65 and 66). By the end of the sixteenth century the practice seems to have become regular (see Hatsell, 2, 225 *et seq.*).

The authority of the Crown in regard to the privileges of the Commons, is further acknowledged by the report of the Speaker to the House, that their privileges have been confirmed in as full and ample a manner as they have been heretofore granted or allowed by his Majesty or any of his royal predecessors (*o*).

This custom probably originated in the ancient practice of confirming laws in Parliament, that were already in force, by petitions from the Commons, to which the assent of the king was given, with the advice and consent of the Lords (*p*).

However the custom may have originated, the Commons from the beginning of the fifteenth century at latest claimed their privileges as prescriptive and according to the "custom of the realm," and as based, like those of the Lords, on the law and custom of Parliament. In the words of the petition to the king, the privileges prayed for are at the

(*l*) See the protestations of the Commons, in answer to James I, who took offence at the Speaker's prayer for their privileges as "their ancient and undoubted right and inheritance," 5 Parl. Hist. 512; 2 Proceedings of the Commons, 1620-1, 359.

(*m*) The claim of privilege in respect of their estates was omitted for the first time on the 5th November, 1852. The claim for servants was retained until the 5th August, 1892, when the claim was omitted, their privileges being wholly abolished (see p. 75), Parl. Deb. (1892), 18. 2 Hatsell, 225, Colchester i, 65.

(*n*) L. J. (1841), 571; *ibid.* (1847-8), 8, etc.; for the form of words used at the opening of the first new Parliament after an accession to the throne, see L. J. (1906), 18; *ibid.* (1911), 9.

(*o*) C. J. (1857), 119; *ibid.* (1935-36) 5, etc.

(*p*) See statement in the Commons' petition, 17th Edward IV (1477), Atwyll's case (p. 69), that their liberties and franchises had been ratified and confirmed to them by the royal authority, 6 Rot. Parl., 191.

same time claimed as "ancient and undoubted." In James I's first Parliament the Commons claimed that the request to enjoy their privileges was "an act only of manners (g)."

#### DISTINCTION BETWEEN PRIVILEGE OF PARLIAMENT AND PRIVILEGE OF PEERAGE

There is a distinction between privilege of Parliament and privilege of peerage. The person of a peer "is for ever sacred and inviolable" by the privilege of peerage, instead of being of limited duration, as is the privilege of Parliament (see p. 73), and this immunity, which rests on ancient custom, has been given statutory recognition by the Acts 12 and 13 William 3, c. 3, and 2 and 3 Anne, c. 12. The privilege of peerage is wider than the privilege of Parliament and Peers who are not lords of Parliament enjoy in some respects more unrestricted privilege than Lords of Parliament who are not Peers.

**Peeresses.**—Peeresses are entitled to the same privilege as peers, whether they be peeresses by birth, by creation, or by marriage (r); but if a peeress by marriage should afterwards intermarry with a commoner, she forfeits her privilege. It is ordered and declared by the Lords, that privilege of Parliament shall not be allowed to minor peers, noblewomen, or widows of peers (saving their right of peerage (s)).

**Representative Peers.**—By the 23rd article of the Act of Union with Scotland, the sixteen representative peers are allowed all the privileges of the peers of the Parliament of Great Britain; and all other peers of Scotland, though not chosen, are given by the same enactment the same privileges as peers of England, except the privileges of the House of Lords, and, in particular, the right of sitting upon a trial of peers. In the same manner, by the 4th article of the Act of Union with Ireland, the representative peers of Ireland (t) are entitled to the same privileges as the peers of Great Britain (u), while the non-representative peers are given the same statutory privileges as the Scottish non-representative peers. But, by the same article, an Irish peer elected to the Commons is not entitled to the privilege of peerage so long as he continues to be a Member of the Commons.

#### PRIVILEGES OF THE COMMONS ORIGINALLY UNDER THE PROTECTION OF THE LORDS

Until they had fully established their position in Parliament, the Commons relied upon the Lords for the enforcement of their privileges.

(g) Apology of the Commons, 20th June, 1604.

(r) Countess of Rutland's case, 6 Co. Rep., 52; cases of Lady Purbeck, 1625; Lady De la Warr, 1642; Lady d'Acre, 1660; Lady Petre, 1664; Countess of Huntingdon, 1676; Countess of Newport, 1699; Lady Abergavenny, 1727; L. J. (1828), 28-31.

(s) Co. Litt. 16 b.; Bac. Abr. vi. 542; Lords Standing Order No. LVIII; L. J. (1660-6), 298; *ibid.* (1691-6), 241; see also *ibid.* (1666-75), 714; *ibid.* (1675-81), 67, 79, 80, 659.

(t) 39-40 Geo. 3, c. 67; 20-21 Vict., c. 33; Election of Representative Peers (Ireland) Act, 1882. But further elections appear to be barred, there being no Lord Chancellor of Ireland to whom the writ would be issued.

(u) 2 Stra., 990; L. J. (1828), 28; case of Viscount Hawarden, an Irish peer, *ibid.* (1828), 15; Rep. Com. of Privileges, *ibid.* (1828), 28, Parl. Deb. (1828), 18, c. 69, Colchester, iii, 544.

In Thorpe's case (p. 69) the Lords, acting on the advice of the judges resolved that Thorpe, the Speaker of the House of Commons, should remain in prison notwithstanding any privilege of Parliament, and the Commons accepted the position and elected a new Speaker. It seems that the Commons did not at that time claim a share even in the privilege jurisdiction of Parliament. It was not till Ferrer's case in 1543 that the Commons relied on their own authority to liberate one of their members (see p. 70). But by the time of Coke at the end of the century, the principle had been established that a matter concerning either House of Parliament ought to be decided in the House to which it relates and not elsewhere (*a*).

#### PRIVILEGES OF EACH HOUSE PART OF THE COMMON LAW OF PARLIAMENT

The two Houses are thus of equal authority in the administration of a common body of privileges. Each House, as a constituent part of Parliament, exercises its own privileges independently of the other. They are enjoyed, however, not by any separate right peculiar to each, but solely by virtue of the law and custom of Parliament (see p. 41). There are rights and powers peculiar to each (as explained in the last chapter); but all privileges properly so called, appertain equally to both Houses. These are declared and expounded by each House; and breaches of privilege are adjudged and censured by each; but still it is the law of Parliament that is thus administered.

#### NEW PRIVILEGES MAY NOT BE CREATED

Although, as stated above, either House may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. In 1704, the Lords communicated a resolution to the Commons at a conference, "That neither House of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament;" which was assented to by the Commons (*b*).

(*a*) 4 Inst. 15.

(*b*) C. J. (1702-4), 555, 560.

## CHAPTER IV

# PRIVILEGE OF FREEDOM OF SPEECH

### SCOPE OF CHAPTER

It will be convenient in this chapter to deal with the privilege of freedom of speech as comprising the right, confirmed to each House by the Bill of Rights (*a*), of exclusive control over its own proceedings. This right includes the power to initiate, and consider in such order as it pleases, matters of legislation or discussion, as well as the privilege of freedom in debate proper. Other rights, equally derived from the power of each House to control its own proceedings, such as the power to discipline its own members, the power to regulate its own procedure, the right to exclude the jurisdiction of the courts, will be adverted to here, but will be dealt with more fully in other chapters or sections.

### NECESSITY OF FREEDOM OF SPEECH

Freedom of speech is a privilege essential to every free council or legislature. Its principle was well stated by the Commons, at a conference on the 11th December, 1667, the conference which resulted in the reversal of the conviction in 1629 of Sir John Eliot and others :

"No man can doubt," they said, "but whatever is once enacted is lawful ; but nothing can come into an Act of Parliament, but it must first be affirmed or propounded by somebody : so that if the Act can wrong nobody, no more can the first propounding. The members must be as free as the houses ; an Act of Parliament cannot disturb the state ; therefore the debate that tends to it cannot ; for it must be propounded and debated before it can be enacted (*b*)."

This important privilege has been recognized and confirmed as part of the law of the land.

According to Elsynge, the "Commons did oftentimes, under Edward III, discuss and debate amongst themselves many things concerning the king's prerogative, and agreed upon petitions for laws to be made directly against his prerogative, as may appear by divers of the said petitions; yet they were never interrupted in their consultations, nor received check for the same, as may appear also by the answers to the said petitions" (Elsynge, 177).

"There could be no assured government by the people, or any part of the people, unless their representatives had unquestioned possession of this privilege. Thus only the House of Commons was concerned in its vindication, and only in its connection with that House could it be a matter of constitutional importance. The Lords, of course, possess the right equally with the Commons, and thus it is considered one of the common privileges of Parliament. But it seems never to have been an issue with the Lords" (White, Eng. Const., p. 440). As Stubbs says, "he would have been a

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(*a*) 1 William and Mary, sess. 2, c. 2.

(*b*) L. J. (1666-75), 166.

bold king indeed who had attempted to stop discussion in the House of Lords" (Stubbs Const. Hist., III (4th ed.) 507).

**Early cases leading to the establishment of the Privilege.**—*Haxey's case*.—In the 20th Richard II (1396–7), a case occurred in which this ancient privilege was first violated, and afterwards signally confirmed. Haxey (*c*), a member of the Commons, having displeased the king, by offering a bill for reducing the excessive charge of the royal household, was condemned in Parliament as a traitor. But on the accession of Henry IV, Haxey exhibited a petition to the king in Parliament to reverse that judgment, as being "against the law and custom which had been before in Parliament;" and the judgment was reversed and annulled accordingly by the king, with the advice and assent of all the lords spiritual and temporal (*d*). This was unquestionably an acknowledgment of the privilege by the highest judicial authority—the king and the House of Lords; and in the same year the Commons took up the case of Haxey, and in a petition to the king affirmed "that he had been condemned against the law and course of Parliament, and in annihilation of the customs of the Commons;" and prayed that the judgment might be reversed, "as well for the furtherance of justice as for the saving of the liberties of the Commons (*e*)."<sup>1</sup> To this the king also assented, with the advice and assent of the lords spiritual and temporal; and thus the whole legislature agreed that the judgment against Haxey, in derogation of the privileges of Parliament, "should be annulled and held to be of no force or effect (*f*)."<sup>2</sup>

*Thomas Young's case*, 1455. Young had in 1451 proposed in the House of Commons that the Duke of York should be declared heir to the crown, and had been sent to the Tower by Henry VI. In 1455 he petitioned the Commons to secure compensation for himself in respect of his imprisonment. The king in reply ordered the Lords of the Council to provide a remedy.

Young's petition, although it invoked "the old liberte and fredom of the Comyns of this lande, had, enjoyed, and prescribed fro the tyme that no mynde is . . . to speke and say in the House of their assemble, as to theym is thought convenient or reasonable without any maner chalenge, charge or punyccion (*g*)," was treated by the Commons as a private petition; and they appear to have made no complaint to the king about the violation of their collective privilege.

*Strode's case*.—In the 4th Henry VIII (1512), Strode, a member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tanners in Cornwall, and was fined and imprisoned in consequence (*h*). Upon which an Act was passed, (*i*) which, after stating that Strode had agreed with others of the Commons in putting forth bills, "the which here, in this High Court of Parliament, should and ought to be communed and treated of," declared the proceedings of the Stannary Court to be void, and further enacted that all suits and other proceedings against Richard Strode, and against every other member of the present Parliament, or of any Parliament thereafter, "for any bill, speaking, or declaring of any matter concerning the Parliament, to be com-

(*c*) Haxey appears to have been a clerical proctor attending under the *praemunientes* clause. See Stubbs, Const. Hist. II (5th edition), 516, *n.* 2.

(*d*) 3 Rot. Parl., 430.

(*e*) "Si bien en accomplissement de droit, come pur salvation des libertes de lez ditz communes."

(*f*) 3 Rot. Parl., 434.

(*g*) 5 Rot. Parl., 337.

(*h*) 4 Parl. Hist. 85, 1 Hatsell, 85.

(*i*) 4 Hen. 8, c. 8.

muned and treated of, be utterly void and of none effect." As the proceedings which had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to be privilege of Parliament, and was not at that time first enacted; and that the statute was intended to have a general operation in future, and to protect all members, of either House, from any question on account of their speeches or votes in Parliament.

#### INCLUSION OF CLAIM IN SPEAKER'S PETITION AND ITS INTERPRETATION

As stated above (p. 44), the privilege of freedom of speech was from 1541 included by established practice in the petition of the Commons to the king, at the commencement of the Parliament (*j*). Notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. In 1593, in reply to the usual petition of the Speaker, Sir Edward Coke, the lord keeper said:

"Liberty of speech is granted you, but you must know what privilege you have; not to speak every one what he listeth, or what cometh in his brain to utter; but your privilege is 'aye' or 'no.' . . . Wherefore, Mr. Speaker, Her Majesty's pleasure is, that if you perceive any idle heads that will not stick to hazard their own estates; which will meddle with reforming the Church, and transforming the Commonwealth, and do exhibit any bills to such purpose, that you receive them not, until they be viewed and considered by those who it is fitter should consider of such things and can better judge them (*k*)."

"The line taken by the Tudor and Stuart sovereigns on this question of freedom of speech shows that the House had to struggle not merely for latitude of discussion, but for the existence of its initiative in legislation and in deliberation. The Crown maintained and the House denied that the Commons were summoned merely to vote such sums as were asked of them, to formulate or to approve legislation or topics of legislation submitted to them, and to give an opinion on matters of policy if, and only if, they were asked for one. A standing protest against this contention on the part of the Crown survives in the practice, at the beginning of every Session, of reading a bill for the first time before the King's Speech is taken into consideration" (Anson, I, p. 167-8). (see p. 275).

Against violation of the privilege under forms of law the Commons evolved a safeguard which was given final expression in Article 9 of the Bill of Rights. This consisted in claiming superiority for the *lex Parliamenti* over the common law, and for the High Court of Parliament independence of the courts in Westminster Hall.

In 1621, the Commons, in their protestation, affirmed "that every Member hath freedom from all impeachment, imprisonment, or molestation, other than by censure of the House itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business." In this protestation the Commons advanced their claims beyond the point established by Strode's case (1512). The Act of the 4th Henry 8 extended no further

(*j*) The petition 33rd Henry 8 (1541), by Thomas Moyle, Speaker, *Elsynge*, 176. See also the Commons' petition for freedom of speech, and King Henry IV's answer, and his subsequent confirmation of the right of free discussion in Parliament in the second and ninth years of his reign, 3 Rot. Parl., 456, 611; 4 Co. Inst., 8.

(*k*) 1 Parl. Hist., 862; but see *English Hist. Review*, vol. 31, p. 128.



than to protect Members from being questioned, in other courts, for their proceedings in Parliament; but its principle should equally have saved them from the displeasure of the Crown. "Molestation" comprised victimization or discriminatory action by the king or the executive, as in the cases of Mr. Strickland in 1571, of Mr. Cope, Mr. Wentworth and others in 1586, and of Sir Edwin Sandys in 1621 (*l*). Dismissal from office was a means by which the king showed his displeasure without openly violating the Commons' claims of privilege, though, in modern times any such action by the Crown (in respect of non-political office) might be regarded as an invasion of privilege. The last use of the exercise of the prerogative in this way was in the case of General Conway, who, in 1764, was dismissed from the king's service, not only as a groom of the bedchamber, but also as Colonel of a regiment, for opposing the ministry of George Grenville on the question of general warrants (*m*).

*Case of Sir John Eliot and others.*—The last occasion on which the privilege of freedom of speech was directly impeached was in the celebrated case of Sir John Eliot, Denzil Hollis and Benjamin Valentine, against whom a judgment was obtained in the King's Bench, in the 5th Charles I, for their conduct in Parliament. On the 8th July, 1641, the House of Commons declared all the proceedings in the King's Bench to be against the law and privilege of Parliament (*n*). The judgment had been given against the privilege of Parliament, upon the false assumption that the Act of the 4th Henry 8 had been simply a private statute for the relief of Strode, and had no general operation. To condemn this construction of the plain words of the statute, the Commons resolved, 12th and 13th November, 1667, "That the Act of Parliament in the 4th Henry 8, commonly intituled 'An Act concerning Richard Strode,' is a general law," extending to all members of both Houses of Parliament; "and is a declaratory law of the ancient and necessary rights and privileges of Parliament," and "That the judgment given, 5 Car., against Sir John Eliot, Denzil Hollis, and Benjamin Valentine, in the King's Bench, was an illegal judgment, and against the freedom and privilege of Parliament." The Lords, at a conference agreed to the resolutions of the Commons; and, upon a writ of error, the judgment of the Court of King's Bench was reversed by the House of Lords, on 15th April, 1668. (*o*) "One cause of error stated was that words spoken in Parliament could only be judged in Parliament and not in the King's Bench; another was that two offences were dealt with by the judgment of the King's Bench, the assault on the Speaker, and the utterance of seditious words in Parliament; and it was alleged that even if the assault was proper to be dealt with by the Court of King's Bench, the words spoken in Parliament could not be dealt with out of Parliament (*p*)."

#### STATUTORY RECOGNITION OF THE PRIVILEGE

This recognition by law of the privilege of freedom of speech received final statutory confirmation after the Revolution of 1688. By the 9th Article of the Bill of Rights it was declared "That the freedom of speech,

(*l*) D'Ewes, 166, 410; 4 Parl. Hist., 153; C. J. (1547-1628), 635; I Hatsell, 83, 136, 137.

(*m*) Anson I (Parliament), 169; see also H. C. 173 (1937-38); *ibid.*, 101 (1938-39).

(*n*) C. J. (1640-42), 203, 3 State Tr., 235; I Hatsell, 250-8.

(*o*) C. J. (1667-87), 19, 25; L. J. (1666-75), 166, 223.

(*p*) 3 State Trials, 332.

and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament (q)."

The 9th Article of the Bill of Rights reinforced the statute of 4th Henry 8 (see p. 48), by giving its sanction to the Commons' claim to exclusive jurisdiction over words spoken in their own House. Its terms apply equally to the jurisdiction of the Lords in their House. Furthermore, this article comprised within such exclusive jurisdiction "proceedings in Parliament"—a term which connotes more than speeches and debates. The interpretation of "proceedings in Parliament" has raised difficulties, and been the subject of decisions both by the Courts and in Parliament (see p. 61). Recognition of the right of each House itself to adjudicate upon the conduct of its Members in their parliamentary capacity may also be found in this Article.

#### SPEECHES IN PARLIAMENT NOT ACTIONABLE

The absolute privilege of statements made in debate is no longer contested, but it may be observed that the privilege which formerly protected Members against action by the Crown now serves largely as protection against prosecution by individuals or corporate bodies. Subject to the rules of order in debate (see Chap. XVIII), a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation.

*Dillon v. Balfour*.—In this action brought in the Irish courts against a member of the House of Commons for words spoken in the House, the court being satisfied that those words constituted the cause of action, ordered that the writ and statement should be taken off the records of the court, the court having no jurisdiction in the matter (r).

**Statements published for the use of Members only not actionable.**  
—*Lake v. King*.—In *Lake v. King* (s) in 1667, which was an action upon the case for printing a false and scandalous petition to the committee of Parliament for grievances, it was agreed by the court, "that the exhibiting the petition to a committee of Parliament was lawful, and that no action lies for it, although the matter contained in the petition was false and scandalous, because it is in summary course of justice, and before those who have power to examine whether it be true or false. But the question was, whether the printing and publishing of it, in the manner alleged by the defendant in his plea," viz. by delivering printed copies to the members of the committee, "according to custom used by others in that behalf, and approved of by the members of the said committee," was justifiable or not. Judgment was given for the defendant, by Hale, C.J., upon the ground, "that it was the order and course of proceedings in Parliament to print and deliver copies, whereof they ought to take judicial notice."

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(q) 1 William and Mary, sess. 2, c. 2. This provision not only protects freedom of speech in Parliament from outside interference, but also indicates the method by which it may be controlled, namely, by each House for its own members.

(r) 20 L. R. Ir., 600.

(s) Saund., 131 (1667); 1 Lev., 240; 2 Keb., 361, 383, 462, 496, 659, 801. See also 2 Co. Inst., 228, as to evidence before a jury being privileged.

**Restraint on Speech in Parliament.**—"Speech and action in Parliament may thus be said to be unquestioned and free. But this freedom from external influence or interference does not involve any unrestrained licence of speech within the walls of the House." (Anson, Vol. 1 (Parliament), p. 170).

The cases in which Members have been called to account and punished for offensive words spoken before the House are too numerous to mention (*t*). Some have been admonished, others imprisoned, and in the Commons some have been expelled (*u*). The unquestionable right of the Lords to commit a peer for words spoken in the House was recognized by the Court of King's Bench in Lord Shaftesbury's case (*a*). In the House of Commons the disciplinary powers of privilege are reinforced by the summary powers conferred on the chair by Standing Orders Nos. 17 and 19 (see p. 440).

#### PROCEDURE CONSEQUENTIAL ON THE PRIVILEGE OF FREEDOM OF DEBATE

The determination of the Commons to secure freedom of debate is connected historically with measures designed for the avoidance of publicity, once steadily enforced on grounds of privilege and now maintained in reserve for use in emergency—the exclusion of strangers and the prohibition of the publication of debates.

**Right to exclude Strangers.**—The House of Commons has always claimed and enjoyed the right to exclude strangers and to debate with closed doors (see p. 226).

The first reason was the inconvenience caused in former times by strangers pressing into the body of the House or attempting from the galleries to influence debate. The other, and principal, reason was the possible intimidation which the Crown might exercise if reports were made of the speech and action of Members in days when freedom of debate did not in practice afford complete protection. Later, in the eighteenth century, the motive was probably reluctance to be held accountable to public opinion.

**Exclusion of Strangers from the Galleries.**—According to ancient usage, the exclusion of strangers from the galleries could, at any time, be enforced without an order of the House; for, on a member taking notice of their presence, the Speaker was obliged to order them to withdraw, without putting a question (*b*). On the 18th May and 8th June, 1849, a member took notice that strangers were present, and they were ordered to withdraw. (Parl. Deb. (1849) 105, c. 662; *ibid.* 1320). Strangers were readmitted without any order of the Speaker (see also H.C. 498 (1849-50)). It was not until the 24th May, 1870, that strangers were again ordered to withdraw, in order to avoid publicity being given to a debate upon the Contagious Diseases Acts (Parl. Deb. (1870) 201, c. 1307), when the House still adhered to the old rule of exclusion (*ibid.* c. 1640); (see also Parl. Deb. (1870) 203, c. 651; *ibid.* (1873) 217, c. 207; *ibid.* (1875) 223, c. 1693).

(*t*) L. J. (1628-42), 475; *ibid.* (1642-43), 77; C. J. (1667-87), 642; *ibid.* (1693-97), 581; *ibid.* (1882) 323, 328.

(*u*) C. J. (1547-1628), 524.

(*a*) 1 Mod., 144-158.

(*b*) Parl. Deb. (1810), 15, c. 310 (Walcheren Expedition, 1810); *ibid.* (1845), 77, c. 138 (see Mr. Speaker's explanation of the rule).

**Right to control Publication of Debates and Proceedings.—**

Closely connected with the power to exclude strangers, so as to obtain, when necessary, such privacy as may secure freedom of debate, is the right of either House to prohibit the publication of debates or proceedings.

The publication of the debates of either House has been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them; and no doubt can exist that if either House desire to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so, and to punish any violation of their orders (c).

*Lords.*—Under the Lords' standing order of the 27th February, 1698, it is a breach of privilege for any person, without the leave of the House, to print, or publish in print, anything relating to its proceedings. Publishers and vendors of printed matter purporting to give an account of proceedings in the House of Lords have been punished.

*Commons.*—On the 13th and the 22nd July, 1641, it was ordered by the Commons "That no Member shall either give a copy, or publish in print anything that he shall speak here, without leave of the House"; and "that all the Members of the House are enjoined to deliver out no copy or notes of anything that is brought into the House, or that is propounded or agitated in the House" (d). In 1628, and again in 1640, the clerk was forbidden to make notes of "particular men's speeches," or to "suffer copies to go forth of any arguments or speech whatsoever" (2 Hatsell, 265). This was a necessary precaution in that critical period. But during the Civil War the House of Commons occasionally published their proceedings. And in 1680 the practice of printing the "Votes and Proceedings" was instituted. But the publication of proceedings continued to be prohibited and punished as a breach of privilege.

In the aristocratic eighteenth century House of Commons the opposition to publication was founded not only on fear of misrepresentation, but on impatience of the pressure of public opinion.

In 1738, in the course of a debate on publication of proceedings, Walpole argued that it would be impossible to prevent misrepresentation if any report of debates were permitted; Pulteney, who led the dissident Whigs, said he would not be "made accountable without doors for what he said within," but the Tory leader Wyndham thought "the public ought to be able to judge of the merits of their representatives." (10 Parl. Hist. 811; 1 Anson, 172). Though the House resolved on this occasion that publication of its proceedings was "a high indignity and a notorious breach of privilege," reporting continued in quarterly and monthly magazines but under cover of fictitious names for the House and its members.

In 1771, the daily newspapers began to report speeches, giving the actual speakers, and sometimes making offensive comments, but an attempt by the House to arrest a printer of reports of debates led to a clash with the city magistrates in which Wilkes was involved (see 1 Anson, 172-3). But this failed to check the practice of reporting debates; and the House, now converted to the necessity and even the value of this practice, shifted its attention to securing full and accurate reporting.

(c) For the provisions made in 1916 and in the 1939-45 war as to reports of debates if either House resolved to hold a "secret session," see p. 816.

(d) C. J. (1640-42), 209, 220. (Publication of Lord Digby's speech.)

**Report of Debates tolerated in practice.**—The repeated orders made by the House forbidding the publication of the debates and proceedings of the House, or of any committee thereof, and of comments thereon, or on the conduct of Members in the House, by newspapers, newsletters, or otherwise, and directing the punishment of offenders against such rules (*e*), have long since fallen into disuse (*f*). Indeed, since 1909, the debates have been reported and issued by an official reporting staff under the authority of Mr. Speaker (see p. 252), and are sold to the public by His Majesty's Stationery Office.

**Complaints of Reports.**—When a wilful misrepresentation of the debate arises, or if it may be necessary to enforce the restriction, the House censures or otherwise punishes the offender, whether he be a member of the House or a stranger admitted to its debates (*g*). But as orders prohibiting the publication of debates are still retained upon the journals, the action of the House, in dealing with the misrepresentation of its debates, is somewhat anomalous, since the offence is treated as a contempt of the House consisting primarily in disobedience to the prohibition (see p. 117). So long as the debates are correctly and faithfully reported, however, the privilege which prohibits their publication is waived.

**Evidence before Committees and Draft Reports.**—The privilege of freedom of speech may be invoked in certain circumstances to prevent the publication of evidence taken before a select committee, until it has been reported to the House (*h*); but as such publication is of the nature of a contempt, it is dealt with on p. 118.

**Common law protection of publication outside Parliament of proceedings in Parliament.**—The attitude of the House of Commons towards the publication of its debates and the changes which this attitude has undergone have been described in the preceding paragraphs. Consideration must now be given to the principles upon which the publication of reports of parliamentary debates and proceedings is privileged against actions in the courts.

Although the privilege of freedom of speech protects what is said in debate in either House, this privilege does not protect the publication of debate outside Parliament. Nor does an order of the House for their printing and publication confer parliamentary privilege on proceedings published outside Parliament. A Member who publishes his speech made in either House separately from the rest of the debate is responsible for any libellous matter it may contain under the common law rules as to defamation of character. But the publication, whether by order of the House or not, of a fair and faithful account of a debate in either House of Parliament is protected by the same principle as that which

(*e*) C. J. (1640-42), 501; *ibid.* (1693-97), 193, 439; *ibid.* (1697-99), 48, 661; *ibid.* (1699-1702), 767; *ibid.* (1702-04), 270; *ibid.* (1722-27), 99; *ibid.* (1727-32), 238; *ibid.* (1761-64), 207; *ibid.* (1790), 508; *ibid.* (1819-20), 57; see also the Second Report on Sir Francis Burdett, C. J. (1810), 732.

(*f*) The Speaker has ruled that a Member cannot be required to state whether expressions alleged to have been made by him in the House were correctly reported in a newspaper. C. J. (1837), 270.

(*g*) C. J. (1812), 432; *ibid.* (1819), 537; *ibid.* (1833), 606.

(*h*) C. J. (1831-32), 360; *ibid.* (1837), 282.

protects fair reports of proceedings in courts of justice, namely, that the advantage to the public negatives the presumption of malice and outweighs any disadvantage to individuals. Statutory protection has been given, by the Parliamentary Papers Act, 1840, to papers published by order of either House of Parliament from proceedings in any court of law.

The close relation between a proceeding in Parliament, such as a debate, and the publication of that proceeding seems to have misled members of both Houses and the courts into thinking that the same privilege protected both the proceeding and its publication.

In his judgment in *R. v. Wright*, Lord Kenyon thought it "impossible to admit that the proceeding of either of the Houses of Parliament could be a libel (*i*), upon which it was afterwards observed that the most learned judge "here confounds the nature of the composition with the occasion of publishing it (*j*)."<sup>1</sup> The notion seems to have been either that the privilege attaching to the proceedings themselves was transferred to their publication, or that anything which formed part of the proceedings of Parliament became permanently divested of all libellous character. But Lord Kenyon himself decided that a speech which had been made in the House of Lords was not privileged, if published separately from the rest of the debate (*R. v. Lord Abingdon* (*k*)). And in *Stockdale v. Hansard* it was decided that publication by order of the House did not confer privilege on a paper which had been ordered to lie upon the Table of the House, and so might be regarded as a proceeding of the House. It was not until 1868 that it occurred to any litigant to bring an action for libel against the publisher of a debate in one of the Houses of Parliament, and, in this case, although the publication was decided to be protected, the principle on which it was protected was held not to be that of parliamentary privilege but the same principle as that on which accurate reports of proceedings in courts of justice are privileged.

**Privilege does not protect a Member publishing his own speech apart from the rest of a debate.**—If a Member publishes his speech, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament.

*Abingdon's case*, 1795.—An information was filed against Lord Abingdon for a libel. He had accused his attorney of improper professional conduct, in a speech delivered in the House of Lords, which he afterwards published in several newspapers at his own expense. Lord Abingdon pleaded his own case in the Court of King's Bench, and contended that he had a right to print what he had, by the law of Parliament, a right to speak; but Lord Kenyon said, that "a member of Parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel." The court gave judgment that his lordship should be imprisoned for three months, pay a fine of £100, and find security for his good behaviour (*Esp.* 228). (*l*).

*Creevey's case*, 1813. Mr. Creevey, a member of the House of Commons, had made a charge against an individual in the House, and incorrect reports of his speech having appeared in several newspapers, Mr. Creevey sent a correct report to the editor of a newspaper, with a request that he would

(*i*) 8 T. R., 293 ff.

(*j*) By Lord Denman in *Stockdale v. Hansard*, 3 St. Tr. (n.s.), 861.

(*k*) *Esp.* 228.

(*l*) See *Rex v. Creevey*, 1 M. & S., 273, 277, 278; *Stockdale v. Hansard*, 3 St. Tr. (n.s.), 861, 896-8; *Wason v. Walter*, 4 Q. B. (1868-9), 85.

publish it. Upon an information filed against him, the jury found the defendant guilty of libel, and the King's Bench refused an application for a new trial (*m*). Mr. Creevey, who had been fined £100, complained to the House of the proceedings of the King's Bench; but the House refused to admit that they were a breach of privilege (*n*).

**Publisher of report of parliamentary debate is protected if the whole debate is published.**—There is a distinction between the absolute privilege of Members speaking in the House, or in any committee of the House, and the qualified privilege of a publisher reporting words spoken; in the latter case publication of parliamentary proceedings is protected, not specifically by privilege of Parliament, but on the analogy of the publication of proceedings in courts of justice.

*Wason v. Walter.* The judgment in *Wason v. Walter* in 1868 was made on the principle that the publication of the proceedings both of courts of justice and of parliament are protected by privilege on the same ground—"that the occasional inconvenience to individuals arising from it must yield to the general good." A fair and faithful report of the whole debate would therefore not be actionable.

The judgment further indicated why the publication of a single speech from a debate would not be privileged—"It is to be observed that the analogy between the case of reports of proceedings of courts of justice and those of proceedings in Parliament being complete, all the limitations placed on the one to prevent injustice to individuals will necessarily attach on the other; a garbled or partial report, or of detached parts of proceedings, published with intent to injure individuals, will equally be disentitled to protection." (See judgment of Cockburn, C.J., *Wason v. Walter* L.R. 4 Q.B. (1868-9) 94).

**General statutory protection for publishers of newspapers.**—By s. 2 of the Newspaper Libel and Registration Act, 1881, a fair and accurate newspaper report of the proceedings of public meetings, published without malice and for the public benefit, is privileged.

**Privilege does not protect publisher publishing paper presented to Parliament and printed by order of the House (except under statutory certificate or proofs).**—It is no defence, at common law, that defamatory statements have been published by order of the House.

*Stockdale v. Hansard* 1837 (o).—An action against the publisher of a report made to Parliament by a statutory body, and ordered by the House to be printed, succeeded on the ground that defamatory statements in the report were not privileged by virtue of the House's order for printing. In Lord Denman's ruling, a distinction was drawn between "what the House may order to be printed for the use of its members," and what may be published and sold "indiscriminately."

The controversy between the House and the Court of Queen's Bench, of which this decision forms a part, led to high words on both sides and raised a wider question, as to the relation of courts of law to questions of Privilege (see below, p. 160). But the decision in this case prescribes the limits of the right of the House to publish its proceedings or matters connected therewith, and lays down that, apart from statutory protection, such publi-

(*m*) See Lord Ellenborough's judgment, 1 M. & S., 278.

(*n*) C. J. (1812-13), 704; H. D. (1812-13), 26, s. 898.

(o) 9 A. & E., 1.

cation, if defamatory, is actionable unless it is confined to members of the House.

*Statutory protection for parliamentary publication.*—By the Parliamentary Papers Act, 1840, passed in consequence of the decision of the Court of Queen's Bench in the case of *Stockdale v. Hansard*, it was enacted that proceedings, criminal or civil, against persons for the publication of papers printed by order of either House of Parliament, shall be immediately stayed, on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either House of Parliament. Proceedings are also to be stayed, if commenced on account of the publication of a copy of a parliamentary paper, upon the verification of the correctness of such copy; and in proceedings commenced for printing any extract from, or abstract of, a parliamentary report or paper, the defendant may give the report in evidence under the general issue, and prove that his own extract or abstract was published bona fide and without malice; and if such shall be the opinion of the jury, a verdict of not guilty will be entered.

Under the provision of this statute the action of *Harlow v. Hansard* was stayed 14th July, 1845, by Mr. Justice Wightman in chambers, on the production of the Speaker's certificate.

In the case of *Houghton and others v. Plimsoll*, tried at Liverpool, 1st April, 1874, Baron Amphlett directed the jury that the report of a Royal Commission, presented to Parliament in a printed form, came within the provisions of the Act, "since it was a report which had been adopted by Parliament, and of which a distribution of copies had been ordered by Parliament." This judgment was followed by Mr. Justice Darling in *Mangena v. Edward Lloyd, Limited*, ((1908) 89 L.T. 640), an action for libel brought in respect of a statement contained in an extract from a paper presented to Parliament by command of his Majesty. The decision in this case, the proceedings in which were presented to both Houses (see Cd. 4403), was followed in *Mangena v. Wright*, ((1909) 2 K.B. 958).

**Extension of the privilege to witnesses, etc., concerned in proceedings in Parliament.**—Witnesses, petitioners, counsel, etc., are protected from suits and molestation in respect of what they say or do in either House or a committee thereof, as participants to that extent in proceedings in Parliament. The privilege, by virtue of which such protection is accorded, may be regarded as an extension of the privilege of freedom of speech, since its purpose is to ensure that information or advice is tendered freely and without concessions to interference from outside (see also pp. 130, 637, 638).

The privilege has been enforced on behalf of witnesses in a number of ways:—

A witness is protected against prosecution in respect of evidence given in Parliament.

*Meggott's case.*—In 1696, Sir G. Meggott was declared guilty of a breach of privilege and committed to the Serjeant for instituting a legal action against witnesses for what they had testified at the committee of privileges and elections. (C.J. (1693-97) 591, 613).

*Parrott's case.*—In 1845 a petition by Mr. Parrott complained that an action had been commenced against him in respect of evidence which he



had given before a committee. The plaintiff and his solicitors, having been ordered to attend, disclaimed any intention of violating the privileges of the House, and declared that the action would be discontinued. They were, in consequence, discharged from further attendance, although the commencement of the action was declared to be a breach of privilege (C.J. (1845) 672, 680, 697, Parl. Deb. (1845) 81, c. 1436).

*Harbin's case.*—In the same year, Mr. Harbin brought an action against Mr. Baker, for false and malicious language uttered before the House of Lords, in giving evidence before a committee. On the 14th July, the plaintiff with his attorney was summoned to the bar, and on their refusal to state that the action should not be proceeded with, both were declared guilty of a breach of privilege and committed (L.J. (1845) 690, 712, 729, Parl. Deb. (1845) 82, c. 431, 494).

A witness has been protected against loss of employment arising out of his evidence.

*Cambrian Railway Directors' case, 1892.*—In consequence of evidence given before the Select Committee on Railway Servants (Hours of Labour) certain witnesses were reduced or dismissed from the service of the Cambrian Railway Company; and on 7th April, 1892, the House ordered the attendance in his place of one of the railway directors, who was a member of the House, and of the two other directors and manager at the bar. The directors and manager were admonished by the Speaker after the House had resolved that they had committed a breach of privilege by their action in dismissing John Hood, one of the witnesses (C.J. (1892) 166).

In consequence of these proceedings an Act was passed; and persons who punish, damnify, or injure witnesses before committees of either House of Parliament on account of their evidence may now under the Witnesses (Public Inquiries) Protection Act, 1892, be convicted of a misdemeanour, fined, imprisoned and condemned to pay the costs of the prosecution, as well as a sum by way of compensation to the injured persons.

A witness is protected against violence, insult or intimidation consequent upon his evidence.

*Stone's case.* In 1697, upon oath made at the bar by Richard Luxford and another, "that Thomas Stone did strike Richard Luxford in this House below the bar, and gave him opprobrious language; who was then attending upon a committee of Lords, in persuance of an order of this House," the Lords attached Thomas Stone and directed the Attorney-General to prosecute him for the offence. (L.J. (1696-1701) 144).

*Hare's case.*—In 1710, on the report from a committee that John Hare, a soldier, was afraid of giving evidence, the Commons resolved, "that this House will proceed with the utmost severity against any person that shall threaten, or any way injure, or send away the said J. Hare, or any other person that shall give evidence to any committee of this House." (C.J. (1708-11) 535).

See also *Medlycot's case, 1715.*—A complaint being made that C. Medlycot, Esq., had been abused and insulted, "in respect to the evidence by him given" before a committee, the person complained of was committed to the custody of the Serjeant. (C.J. (1714-18) 371; Goold's case, 1819, *ibid.* (1819) 223).

A witness is protected against censure by any other authority in respect of his evidence.

*Dunbar's case.*—In 1733, complaint was made that Jeremiah Dunbar, Esq., had been censured by the House of Representatives of Massachusetts Bay, for evidence given by him before a committee on a bill, upon which the House resolved, *nem con.*, "That the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this House, or any committee thereof, is an audacious proceeding and a high violation of the privileges of this House." (C.J. (1732-37) 146).

Counsel are protected from molestation in respect of their speeches in Parliament.

*Wharton's case.*—An individual who sent an insulting letter to Counsel in relation to a speech made by Counsel at the Bar of the House of Lords, was ordered to attend the House and obliged to make a proper submission and apology before being discharged. (L.J. (1826) 128, 142, 145).

#### RIGHT TO EXCLUSIVE COGNIZANCE OF PROCEEDINGS IN PARLIAMENT

Article 9 of the Bill of Rights (*p*), confirming the long-standing claims of each House of Parliament to exclude all outside interference within its own walls—claims which had only been seriously challenged in the case of the House of Commons—lays down that "freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament."

**Origin of the claim to exclusive jurisdiction.**—Several notions, some older than Parliament itself, have made a contribution to the law declared in the Bill of Rights. There is first, the notion of the judicial pre-eminence of the High Court of Parliament, as a court from which there is no appeal. The Lords' claim to be such a court could not be disputed. The Commons' claim was more doubtful (see *p.* 89), but in Henry VIII's reign it could be said in the courts with respect to a decision of the Commons in a matter of privilege, that their errors "were not reversible in any other court" (Trewynnard's case, 1 Hatsell, 63). Secondly, there was the notion that members of such a court had the right to be tried exclusively in that court. This claim was also first made on behalf of the Lords, and in its wider form, the right to trial by peers, was never arrogated by the Commons. But in the form that for their conduct in Parliament Members should not be punished in any inferior court—the form in which the claim was made, for instance, by the Bishop of Winchester in 1330 (Y. B. 3 Edw. 3, f. 18, see 13 St. Tr. 1435)—the Commons claimed the right for themselves equally, and as part of the *lex Parliamenti* (in Coke's 4th Institute f. 50). Finally, there was the long-standing claim to freedom of speech in its double form—the collective right of the House to discuss subjects of their own choice without reference from the king, and the right of the individual Member in debate to speak his mind with impunity (see *p.* 47).

Thus, although this Article was no doubt intended to be comprehensive, it is well to be reminded that it is only declaratory of the law of Parliament, and that, if future research establishes the validity of claims as to freedom of speech or the jurisdiction of Parliament which are not

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(*p*) William & Mary, sess. 2, c. 2.

covered by this Article, they are not to be regarded on that account as excluded. It may prove to be the case that the law is wider than Article 9.

There are three principal matters involved in the statement of the law contained in this Article :—

1. The right of each House to be the sole judge of the lawfulness of its own proceedings ;
2. The right implied to punish its own Members for their conduct in Parliament ;

Further, there is the question,

3. What is the precise meaning of the term “ proceedings in Parliament ” ?

**1. The right of each House to be the sole judge of the lawfulness of its own proceedings.**—The collective privilege of each House to decide what it will discuss and in what order was hardly ever disputed in the case of the House of Lords. But it was frequently a subject of dispute between the Crown and the Commons that the latter intruded into matters of high policy beyond their competence, and the House had continually to insist on its right to consider and obtain redress of “ grievances ” before granting supply.

Another collective right of the House is to settle its own code of procedure. This is such an obvious right—it has never been directly disputed—that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion. This is equally the case whether a House is dealing with a matter which is finally decided by its sole authority, such as an order or resolution, or whether, like a bill, it is the joint concern of both Houses.

This holds good even where the procedure of a House or the right of its members to take part in its proceedings is dependent on statute. For such purposes the House can “ practically change or practically supersede the law.” (Per Coleridge, C. J., in *Bradlaugh v. Gossett*, 12 Q. B. D., pp. 273-4).

*Bradlaugh's case.*—One of the results of the confused dispute between Mr. Bradlaugh and the House of Commons, which was prolonged throughout the Parliament of 1880-85, was the unqualified recognition by the courts of their incompetence to inquire into the internal proceedings of a House of Parliament. Mr. Bradlaugh, at the beginning of the new Parliament in May, 1880, claimed to make affirmation under the Evidence Amendment Acts, 1869 and 1870, instead of taking the oath. He was eventually permitted to make the affirmation “ subject to any liability by statute,” and took his seat. Upon an action for penalties it was decided, finally by the House of Lords, that Mr. Bradlaugh had not qualified himself to sit by making the affirmation. On re-election, he attempted to take the oath, but was prevented by order of the House which eventually directed the Serjeant to exclude him from the House until he undertook to create no further disturbance. Mr. Bradlaugh then brought an action against the Serjeant in order to obtain a “ declaration that the order of the House was beyond the power and jurisdiction of the House and void, and secondly

an order restraining the Serjeant at Arms from preventing Mr. Bradlaugh by force from entering the House."

In his judgment Mr. Justice Stephen defined the relation between the jurisdiction of the courts and that of the House of Commons over the internal proceedings of the House as follows :—

"Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying out? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings." (12 Q.B.D., p. 278).

"... It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly." (*ibid.*, pp. 280-1).

He assimilated the jurisdiction of the House over its own internal concerns to that of a court "whose jurisdiction is not subject to appeal." (*ibid.* p. 285).

The limits of the jurisdiction of the House in the particular case were defined as follows :—

"... for the purpose of determining on a right to be exercised within the House itself, and in particular the right of sitting and voting, the House and the House alone could interpret the statute but ... as regarded rights to be exercised out of and independently of the House, such as the right of suing for a penalty for having sat and voted, the statute must be interpreted by this Court independently of the House." (*ibid.* p. 282).

On the other hand while recognizing that the rights of persons outside the House, i.e. Mr. Bradlaugh's constituents, were affected by the decision of the House the learned judge denied the power of the courts to protect them so far as their rights were exercisable inside the House (*ibid.* p. 285-6).

**2. The right implied to punish its own Members for their conduct in Parliament.**—It seems that the Speaker, in his petition, also sought for the Commons the right to punish any Member who, by his conduct, might offend the House.

Describing the Speaker's petition at the opening of Parliament, Sir Thomas Smith, in *De Republica Anglorum* (circa 1565) said that the Speaker asked, among the other privileges "that if any should chance of that lower House to offend or not to do or say as should become him, or if any should offend any of them being called to that his highness court: That they themselves might (according to the ancient custome) have the punishment of them." (*Op. cit.* p. 52).

This privilege is now partly embodied in S.O.'s No. 17 and No. 19, which prescribe a summary procedure for enforcing discipline, but is not dependent upon them for its existence.

**3. The meaning of the term "proceedings in Parliament."**—The meaning of the term "proceedings in Parliament" has not been expressly defined by the courts, although they have decided that various specific matters connected with Parliament do or do not fall within the ambit of its "proceedings."

The primary meaning, as a technical parliamentary term, of "proceedings" (which it had at least as early as the seventeenth century) is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision.

An individual Member takes part in a proceeding usually by speech, but also by various recognized kinds of formal action, such as voting, giving notice of a motion, etc., or presenting a petition or a report from a Committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers also can take part in the proceedings of a House, e.g. by giving evidence before it or before one of its committees, or by securing the presentation of their petitions.

While taking part in the proceedings of a House, Members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.

By the insertion of the term "proceedings" in the Bill of Rights, Parliament gave statutory authority to what was implied in previous declarations of the privilege of freedom of speech by the Commons, e.g., in the Protestation of 1621, where it is claimed :

"that in the handling and proceeding of those businesses every member of the House of Parliament hath and of right ought to have freedom of speech to propound, treat, reason and bring to conclusion the same . . . and that every member of the said House hath like freedom from all impeachment, imprisonment and molestation (other than by censure of the House itself) for or concerning any speaking, reasoning or declaring of any matter or matters touching the parliament or parliament business." (1 Rushworth, 53).

A general idea of what the term covers is given in the Report of the Select Committee on the Official Secrets Acts in session 1938-39.

"It covers both the asking of a question and the giving written notice of such question, and includes everything said or done by a member in the exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business" (q).

This may be set beside the description given by an American court :

"I will not confine it (freedom of speech) to delivering an opinion, uttering a speech or haranguing in debate, but will extend it to giving a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office." (Parsons, C.J., in *Coffin v. Coffin*, decided by the Supreme Court of Massachusetts, 4 Mass. 1). (The constitutional provision to be applied in this case referred only to "deliberation, speech and debate," and made no reference to "proceedings." But no difficulty seems to have been felt in extending the privilege to acts as well as words);

and the opinion of a Canadian judge :

"I desire it to be understood, however, that I do not hold that a member of Parliament is not amenable to the ordinary courts for anything he may

(q) H. C. 101, p. v (1938-39).

say or do in Parliament. I merely say he is not so amenable for anything he may say or do within the scope of his duties in the course of parliamentary business, for in such matters he is privileged and protected by *lex et consuetudo parliamenti*." (O'Connor, J., in *R. v. Bunting*, 7 Ontario Reports (1884-5), p. 563).

#### MATTERS ARISING IN HOUSE WHICH ARE NOT PROCEEDINGS IN PARLIAMENT

What is done or said by an individual Member becomes entitled to protection when it forms part of a proceeding of the House in its technical sense, i.e., the formal transaction of business with the Speaker in the Chair or in a properly constituted committee. It will be considered later whether what is said or done outside the House may not be so closely related to a proceeding of the House as to become entitled to protection. But it does not follow that everything that is said or done within the Chamber during the transaction of business forms part of proceedings in Parliament. Particular words or acts may be entirely unrelated to any business which is in course of transaction, or is in a more general sense before the House as having been ordered to come before it in due course. This is a test which may be useful in deciding how far crimes committed during a sitting may be entitled to privilege. But it may be used to dispose immediately of the most obvious case, that of a casual conversation between two Members which takes part during the progress of a debate.

*Coffin v. Coffin*.—In *Coffin v. Coffin* (4 Mass. 1) the Supreme Court of Massachusetts decided that slanderous words uttered by one Member to another within the Chamber itself during the course of the debate, were not protected by parliamentary privilege, even though, as it was pointed out, the matter with which the slander was connected had been the subject of debate at that sitting and was still before the House in the sense that it was for consideration on a future day.

In the view of the Select Committee on the Official Secrets Acts "a casual conversation in the House cannot be said to be a proceeding in Parliament, and a member who discloses information in the course of such a conversation would not . . . be protected by privilege, though it might be a question whether the evidence necessary to secure his conviction could be given without the permission of the House." (H.C. 101, p. ix (1938-39)).

#### PROCEEDINGS IN PARLIAMENT AND THE CRIMINAL LAW

It is sometimes said that, since the privileges of Parliament do not extend to criminal matters, therefore Members are amenable to the course of criminal justice for offences committed in speech or action in the House. This is to confuse the privilege of freedom of speech within Parliament with the privilege of freedom from arrest which Members enjoy outside Parliament. For proceedings in Parliament are not subject to the limitations which apply to the privilege of freedom from arrest outside Parliament.

It may prove to be true that things said or done in Parliament, or some of them, are not withdrawn from the course of criminal justice. But, if, so, that is because they do not form part of proceedings in Parliament.

It will be convenient to examine the position with regard to criminal words and criminal acts in Parliament separately.

**Criminal words in Parliament.**—It may be regarded as established that a Member is not amenable to the ordinary courts for anything said in debate, however criminal in its nature. The language of Article 9 of the Bill of Rights is designed to make this clear. Except by some forced construction words spoken in debate cannot be taken out of the category of proceedings in Parliament. This principle is also established by the decision of the House of Lords in reversing the condemnation in the King's Bench of Sir John Eliot and his fellow Members on the ground, partly, that speeches of whatever character made in Parliament could not be inquired into out of Parliament (*r*).

**Criminal acts in Parliament.**—There is more doubt as to whether criminal acts committed in Parliament remain within the exclusive cognizance of the House in which they are committed. In the judgment of the House of Lords in Eliot's case (referred to above), it was deliberately left an open question whether the assault on the Speaker might have been properly heard and determined in the King's Bench. The possibility that it might legally have been so determined was admitted by one of the managers for the Commons in the conference with the Lords which preceded the writ of error.

In *Bradlaugh v. Gosset*, Mr. Justice Stephen said that he "knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice." ([1884] 12 Q.B.D. p. 284). Since he went on immediately to refer to Eliot's case and accepted the proposition "that nothing said in Parliament by a Member, as such, can be treated as an offence by the ordinary courts," it must be supposed that what the learned judge had in mind was a criminal act as distinguished from criminal speech.

It is probably true, as a general rule, that a criminal act done in the House is not outside the course of criminal justice. But this rule is not without exception, and both the rule and the exception will be found to depend upon whether the particular act can or cannot be regarded as a proceeding in Parliament.

In *Bradlaugh v. Erskine*, the Deputy-Serjeant at Arms was held to be justified in committing the assault with which he was charged, since it was committed in Parliament, in pursuance of the order of the House, to exclude Bradlaugh from the House.

Just as Members in debating and voting the order would, as taking part in a proceeding in Parliament, not be amenable to the courts, so an officer in carrying out an order within the precincts of the House is taking part in a proceeding in Parliament, and is in the same position with regard to the courts as the Members who voted the order. As Lord Coleridge said, "The Houses cannot act by themselves as a body; they must act by officers." (12 Q.B.D. 276).

On the other hand, it would be hard to show that a criminal act committed in the House by an individual Member was part of the proceedings of the House. As pointed out earlier, but for a few formal

acts of a customary kind, a Member's contribution to the proceedings of the House is limited to speech.

Apart from Eliot's case no charge against a Member of having committed a criminal act in Parliament has been heard by the ordinary courts. Owing to the lack of precedents there is no means of knowing what view the courts would take of a criminal act committed in Parliament, or whether they would distinguish action from speech in respect of amenability to the criminal law.

With regard to a crime committed in Parliament, the House in which it was committed might claim the right to decide whether to exercise its own jurisdiction or to hand the offender over to the criminal courts. In taking this decision, it would no doubt be guided by the nature of the offence, and the adequacy or inadequacy of the penalties, somewhat lacking in flexibility, which it could inflict.

#### MATTERS ARISING OUTSIDE PARLIAMENT WHICH MAY BE TREATED AS PROCEEDINGS IN PARLIAMENT

It is a question whether the immunity attached to proceedings in Parliament can be extended to matters arising outside Parliament by virtue of their specially close relation to proceedings in Parliament. The Select Committee on the Official Secrets Acts reported that,

"cases may easily be imagined of communications between one Member and another or between a Member and a Minister, so closely related to some matter pending in, or expected to be brought before the House, that, although they do not take place in the Chamber or a committee room, they form part of the business of the House, as, for example, where a Member sends to a Minister the draft of a question he is thinking of putting down, or shows it to another Member with a view to obtaining advice as to the propriety of putting it down or as to the manner in which it should be framed." (H.C. 101 p. v. (1938-39)).

But this opinion was confined to the application of the Official Secrets Acts to the proceedings of an individual Member, and would not necessarily afford protection in other cases.



## CHAPTER V

# PRIVILEGE OF FREEDOM FROM ARREST OR MOLESTATION

### ORIGIN AND SCOPE OF THE PRIVILEGE

It has been stated above (p. 43) that parliamentary privilege originated in the king's protection of his servants but is now claimed as an independent right. The privilege of freedom from arrest or molestation of members of Parliament, which is of great antiquity, was of proved indispensability, first to the service of the king, and now to the functioning of each House.

"In connection with most early assemblies that were in any way identified with the king, is to be found some idea of a royally sanctioned safe-conduct ; the king's peace was to abide in his assembly and was to extend to the Members in coming to it and returning from it. Naturally, these royal sanctions applied to Parliament. But as time went on, molestation of Members was more likely to be through some process of law than through direct bodily injury or restraint. Unless Parliament could keep its membership intact, free from outside interference, whether or not the interference was with the motive of embarrassing its action, it could not be confident of any accomplishment." (White, Eng. Const. p. 439).

The principal reason for the privilege has also been well expressed in a well-known passage by Hatsell :—

"As it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such courts whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance ; it is more peculiarly essential to the Court of Parliament, the first and highest court in this kingdom, that the Members, who compose it, should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so immediately necessary for the great services of the nation : it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties, and not considered as liable to some legal processes, to which other citizens, not intrusted with this most valuable franchise, are by law obliged to pay obedience." (I Hatsell, p. 1-2).

It will be convenient to indicate briefly the scope of the privilege of freedom from arrest and the extent and principal limits of its application which are dealt with in this chapter.

The privilege has been defined both positively and negatively ; the positive aspect of the privilege is expressed in the claim of the Commons to freedom from arrest in all civil actions or suits during the time of

Parliament and during the period when a Member was journeying to or returning from Parliament. In their petition of 1404 the Commons claimed that, according to the custom of the realm, they were privileged from arrest for debt, trespass or contract of any kind (3 Rot. Parl., 541). "Here may be seen both the limitation of their privilege, since they did not claim that it extended to criminal charges, and its dependence on the king's assistance for realization." (Pickthorn, Henry VII, p. 110.)

The privilege has been defined negatively in the claim of the Commons in 1429, which specifically excepted treason, felony and surety of the peace (4 Rot. Parl. 357). For the purposes of constitutional theory, the alternatives of civil actions or criminal offences of the kind specified were at first tacitly supposed to exhaust all possible grounds of arrest. But there was later found to be a debatable intermediate region, including cases of commitment for contempt, the growing list of modern statutory offences, and preventive detention by order of an executive authority. In order to draw the line between what was privileged and what was not privileged it became necessary for the House or select committees of the House to decide in each particular case of arrest whether it was for an offence of a quasi-criminal character, or whether the offence was purely civil. In the nineteenth century, for example, as is described below in detail, the House referred to committees on privilege almost every case in which a Member had been arrested for criminal contempt of court, in order to discover whether or not privilege might be claimed. The application of the privilege to cases of Members arrested and subsequently released by the action of either House is also described below (p. 69 *et seq.*).

Freedom from arrest has lost almost all its value since, as a result of the Judgments Act, 1838, s. 1, and subsequent legislation, imprisonment in civil process has been practically abolished (a).

There has been statutory recognition of the privilege in a series of Acts which have at the same time limited its operation in respect of freedom from distress of goods.

Another earlier privilege, which has now been almost wholly abrogated by statute, was the immunity of a Member from being impleaded. As a result of a series of statutory modifications Members of Parliament may now be coerced by every legal process, except the attachment of their bodies (p. 75). By the Parliamentary Privilege Act, 1770, statutory exemption from arrest was reaffirmed only for the Members of both Houses, and not for their servants, who till that date had been entitled to most of the privileges of their masters.

The privilege of Members' servants was given up without a struggle, probably because it was personal in nature and applicable to individuals rather than to the House. On the other hand, wherever the service of the House is called in question, the privilege of freedom from arrest has been jealously asserted and, if necessary, extended. Thus witnesses and parties, while their causes or bills were depending, have very frequently been protected by the House from molestation (pp. 83-84, 128-131).

Privileges analogous to that of freedom from arrest, which are also based on the prior claim of the House to the service of its Members, are

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(a) See Pike, Const. History of House of Lords, 259.

the privileges of resisting a subpoena to attend as a witness (p. 75), and of exemption from jury service (p. 76).

Finally, because the parliamentary (b) privilege is always associated with the service of the House, it is limited to a period comprised by the duration of the session, together with a convenient and reasonable time before and after the meeting of Parliament. This convenient and reasonable time has generally been taken to be forty days before and after a session of Parliament (p. 73).

### FREEDOM FROM ARREST IN CIVIL PROCESS

It will be convenient to begin with the sphere in which enjoyment of freedom from arrest is unquestioned, namely, in civil suits, setting out the extent to which this privilege has been limited or defined by statutes and resolutions of either House; then similarly to define the sphere in which freedom from arrest does not exist, namely, in criminal process; and to conclude with an account of the extent to which the privilege has been extended by analogy from Members to other persons, such as witnesses, in virtue of their relations to Parliament.

Privilege protects Members of Parliament with the same sanction as well from illegal molestation as from the legal process of arrest. Either is equally a breach of privilege. But in this section attention will be concentrated on the privilege in its latter aspect. It is unnecessary to enlarge on breaches by way of molestation, which in their modern form of threats rather than infliction are reserved for the chapter on Contempts (Ch. VIII), further than to refer to an early recognition of the principle.

*Chedder's case*, 1404.—On petition of the Commons for the punishment of the assailant of Richard Chedder, the servant of a Member attending Parliament, the Commons claimed the special protection of the king for themselves and their servants in "coming, remaining and returning," and it was enacted that in this and in similar cases for the future the assailant should pay double damages besides fine and ransom to the king (5 H. 4 (1404) c. 6; R.P. iii, 542; 1 Hatsell, 15-7). The same penalty was imposed by a general statute (11 H. 6 (1432) c. 11) on assaults on members of either House coming to Parliament. It is a striking coincidence that the penalty is identical with that of the laws of Ethelbert: "If the king call his 'leod' to him and anyone there do them evil, a twofold 'bot' and fifty shillings to the king" (Stubbs, *Sel. Charters*, 9th ed. p. 66).

In its early form the privilege of resistance to legal process was more extensive than it is at present, nor was it created by statute. It will be convenient to set it out in its full extent and then to indicate the steps by which it was reduced to its modern dimensions. For this purpose a selection will be made from the cases set out in Hatsell, Vol. I, pp. 1-204.

#### CASES ILLUSTRATING THE EARLY RECOGNITION OF THE PRIVILEGE BY THE KING

**Freedom from distraint.**—One early form of the privilege recognized by the king was the claim to exemption from distraint, illustrated in 1290.

(b) A peer's privilege of freedom from arrest is continuous and independent of the sitting of Parliament.

*Bishop of St. David's case*, 1290.—In answer to a petition of the Master of the Temple for leave to distrain for the rent of a house held of him by the Bishop of St. David's, the king said, "It does not seem fit that the king should grant that they who are of his council should be distrained in time of Parliament." (1 Rot. Parl. 61; 1 Hatsell 3).

*Prior of Malton's case*, 1315.—In the Prior of Malton's case this privilege was also acknowledged very distinctly by the Crown (1 Hatsell 12).

**Freedom from being impleaded claimed by Commons on ground of prescription.**—Apart from the early statutory recognition (see Chedder's case, above) of the privilege, the claim of the Commons in Atwyll's case shows that the privilege was not created by statute. According to Hatsell (I, 50), it was the first claim to the privilege of not being impleaded.

*Atwyll's case*, 1477.—In 1477 the Commons affirmed that the privilege, 'that they should not be impleaded in any action personal,' had existed "whereof tyme that mannys mynde is not the contrarie" (6 Rot. Parl. 191), thus placing it on the ground of prescription, and not on the authority of statutes then in force.

#### COMMONS' PRIVILEGES ORIGINALLY DEPENDENT ON PROTECTION OF LORDS

Although the Commons' claim to the privilege of freedom from arrest was thus given royal and statutory recognition at an early date, the enforcement of the privilege was dependent on the Lords and king, who, as Thorpe's case shows, were not always willing to protect the Commons.

*Thorpe's case*, 1452.—Thorpe, the Speaker of the Commons, was imprisoned in 1452, under execution from the Court of Exchequer, at the suit of the Duke of York; and was retained in prison by the order of the House of Lords, although the judges advised them that Thorpe was entitled to his release (see p. 69). (5 Rot. Parl. 239. See also Henry IV's reply to the Commons' petition of the 5th year of his reign, 3 *ibid.* 541). The case, however, has been regarded as irregular and "begotten by the iniquity of the times." (C.J. (1547-1628) 546). Other aspects of Thorpe's case are considered on pp. 74 and 150.

Hatsell, commenting on Thorpe's case, points out that not only did the Lords respond to the application of the Commons by adjudging that Thorpe, the Speaker of the House of Commons, should remain in prison, but that the Commons so easily acquiesced in this decision that they immediately proceeded to the election of another Speaker (1 Hatsell, 33). In Ferrers' case also the Commons at first appealed for redress to the Lords, though they eventually decided to act on their own authority.

#### MEANS OF ENFORCING THE PRIVILEGE

##### I. RELEASE OF MEMBERS FROM CUSTODY: EARLY CASES IN COMMONS

Down to 1543, although the privilege had been recognized by statute, by declaration of both Houses, by the frequent assent of the king, and by the opinions of the judges, the Commons did not deliver their Members out of custody by their own authority; but when the Members were in execution, in order to save the rights of the plaintiff, they obtained special statutes to authorize the lord chancellor to issue writs for their release;

and when confined on mesne process only, they were delivered by a writ of privilege issued by the Lord Chancellor (*c*). In 1543, the Commons, for the first time, themselves vindicated the privilege of Parliament, and acted independently of any other power.

*Ferrers' case*, 1543.—George Ferrers, a member, was arrested in London, by a process out of the King's Bench, at the suit of one White, as surety for the debt of another. The House, on hearing of his arrest, ordered the Serjeant to go to the Compter and demand his delivery. The Serjeant was resisted by the city officers, who were protected by the sheriffs; and he was obliged to return without the prisoner. The Commons laid their case before the Lords, "who, judging the contempt to be very great, referred the punishment thereof to the order of the Commons' House." They ordered the Serjeant to repair to the sheriffs, and to require the delivery of Ferrers, without any writ or warrant. The lord chancellor had offered them a writ of privilege, but they refused it, "being of a clear opinion that all commandments and other acts proceeding from the neather House were to be done and executed by their Serjeant without writ, only by show of his mace, which was his warrant." The sheriffs, in the mean time, had surrendered the prisoner: but the Serjeant, by order of the House, required their attendance at the bar, together with the clerks of the Compter, and White, the plaintiff; and they were all committed for their contempt (*d*).

The practice of releasing Members by a writ of privilege was still continued, notwithstanding the course pursued in the case of Ferrers; but henceforward no such writ was suffered to be obtained without a warrant previously signed by the Speaker.

It has been suggested that the unprecedented assertiveness shown in the release of Ferrers was at least as much due to his being the king's servant as to his membership of the House of Commons. This is supported by the king's statement to both Houses, as reported by Holinshed (*e*).

## 2. RELEASE OF MEMBERS FROM CUSTODY: EARLY CASES IN LORDS

The principal cases in the Lords, up to this period, show an uncertainty in their practice similar to that of the Commons; privileged persons being sometimes released immediately, and sometimes by writs of privilege.

*Diggs' case, etc.*—On the 1st December, 1585, they ordered to be enlarged and set at liberty James Diggs, servant to the Archbishop of Canterbury, "by virtue of the privilege of this court;" and again, in the same year, a servant of Lord Leicester; and in 1597, the servants of Lord Chandois and the Archbishop of Canterbury. In the two last cases the officers who had arrested the prisoners were committed by the House (*f*).

(*c*) Larke's case, "Le Roi, par advis des seigneurs espirituelx et temporelx, et a les especiales requestes des communes," 4 Rot. Parl., 357; also 5 *ibid.*, 374; Atwyll's case, 6 *ibid.*, 191; Parr's case, 5 *ibid.*, 111; Hyde's case, 6 *ibid.*, 160; Thorpe's case, 5 *ibid.*, 239; Sadcliff's case, 1 Hatsell, 51.

(*d*) See also the king's statement and the lord chief justice's declaration confirming the Commons' privileges, 1 Holinshed, 824; 1 Hatsell, 57. See also Smalley's case (1575), C. J. (1547-1628), 108; see also the cases of Mr. Fitzherbert (1592) and Mr. Neale, D'Ewes, 482, 514, 518, 520; 1 Hatsell, 107.

(*e*) 1 Hatsell, 59.

(*f*) L. J. (1578-1614), 66, 93, 201, 205; see also the cases of William Hogan, released by the order of the House; and of Vaughan, released by a writ of privilege, *ibid.*, 230, 238, 241; D'Ewes, 603, 607.

## 3. PRESENT MODE OF RELEASING ARRESTED MEMBERS

By the statute of 1 James 1, c. 13, and certain statutes in restriction of privileges (see p. 72), the freedom of Members from arrest in civil cases has become a legal right rather than a parliamentary privilege. The arrest of a Member in a civil cause is, therefore, irregular *ab initio* and he may be discharged immediately, upon motion in the court from which the process issued (g). For the same reason writs of privilege have been discontinued.

*Asgill's case.*—In 1707, a few years after the passing of the Act 12 & 13 Will. 3, c. 3, the Serjeant was sent with the mace to the warden of the Fleet, who obeyed the orders of the House, and discharged Mr. Asgill, a member then in execution (h). Peers, peeresses and Members are now discharged directly by order or warrant, and the parties who cause the arrest are liable to censure and punishment, as in the case of the Baroness Le Calc, in 1811; and Viscount Hawarden, in 1828 (i).

*Mills' case.*—In 1807, Mr. Mills had been arrested on mesne process, and was afterwards elected. The House determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the marshall of the King's Bench (j).

*Burton's case.*—In 1819, Mr. Christie Burton had been elected for Beverley, but being in custody on execution, and also on mesne process, was unable to attend his service in Parliament. The House determined that he was entitled to privilege, and ordered his discharge from the custody of the warden of the Fleet. An action for his escape was brought against the warden by the assignees of a creditor of Mr. Burton, who were declared guilty of a breach of privilege, and ordered to attend the House (k).

## 4. TRANSITION TO MODERN PRACTICE

The process by which the earlier methods were replaced by the modern practice of Parliament in protecting Members from arrest must now be considered.

*Case of Sir T. Shirley.*—In 1603, the case of Sir Thomas Shirley occasioned a more distinct recognition of the privilege by statute, and an improvement in the law. He had been imprisoned in the Fleet, in execution, before the meeting of Parliament, and the Commons first tried to bring him into the House by habeas corpus, and then sent their Serjeant to demand his release. The warden refused to give up his prisoner, and was committed to the Tower, and to the cell therein called "Little Ease," for his contempt. At length the warden delivered up the prisoner, and was discharged, after a reprimand (l).

So far the privileges of the House were satisfied; but there was still a legal difficulty to be overcome, that had been common to all cases in which Members were in execution, viz., that the warden was liable to an action of escape, and the creditor had lost his right to an execution (m). In former cases a remedy had been provided by a special Act, and the

(g) See Colonel Pitt's case (1734), 2 Stra., 985.

(h) C. J. (1705-8), 471.

(i) L. J. (1810-12), 60, 63; *ibid.* (1828), 34 (and Report of Precedents, 28).

(j) C. J. (1807) 654.

(k) C. J. (1819), 44; *ibid.* (1819-20), 286.

(l) C. J. (1547-1628), 155, *et seq.*; 5 Parl. Hist., 113, etc.; 1 Hatsell, 157.

(m) See C. J. (1547-1628), 173, 195; and Collection of Precedents, *ibid.* (1688-93), 401.

same expedient was now adopted; but in order to provide for future cases of a similar kind, a general Act, 1 Jas. 1, c. 13, was passed, which, while it recognized the privilege of freedom from arrest, the right of either House of Parliament to set a privileged person at liberty, and the right to punish those who make or procure arrests, enacted that after such time as the privilege of that session in which privilege is granted shall cease, parties may sue forth and execute a new writ; and that no sheriff, etc., from whose arrest or custody persons shall be delivered by privilege, shall be chargeable with any action.\*

Although the privilege of either House of Parliament was admitted to entitle a prisoner to his release, the manner of releasing him was, during the seventeenth century, still indefinite, whether by warrants for a writ of privilege or a writ of habeas corpus, or by the order of the House (*n*). During the same period also, when the property of peers or of their servants was distrained, the Lords were accustomed to interfere by their direct authority, as in 1628 (*o*); but privilege did not attach to property held by a peer as a trustee only (*p*). In cases of arrest on mesne process, the practice of releasing the prisoners directly by a warrant, or by sending Black Rod or the Serjeant, in the name of the House, to demand them (*q*), was continually adopted. At length, in the year 1700, an Act was passed (*r*), which, while it maintained the privilege of freedom from arrest with more distinctness than the Act 1 Jas. 1, c. 13, made the goods of privileged persons liable to distress infinite and sequestration, between a dissolution, or prorogation, and the next meeting of Parliament, and during adjournments for more than fourteen days. In suits against the king's immediate debtors, execution against Members was permitted even during the sitting of Parliament, and the privilege of freedom from arrest in such suits was not reserved to servants.

Again, by 2 & 3 Anne, c. 12, executions for penalties, forfeitures, etc., against privileged persons, being employed in the revenue or any office of trust, were not to be stayed by privilege.

Freedom from arrest, however, was still maintained in such cases for the Members of both Houses but not for their servants.

#### EFFECT OF THE PRIVILEGE ON ADMISSIBILITY OF MEMBERS AS BAIL

As a consequence of the immunity of a member of Parliament, it has been held that he cannot be admitted as bail; for not being liable to attachment, by reason of his privilege, he cannot be effectually proceeded against, in the event of the recognizances being forfeited (*s*).

(*n*) L. J. (1578-1614), 270, 296, 299, 302, 588; *ibid.* (1620-28), 30; *ibid.* (1628-42), 654; *ibid.* (1645-46), 635, 639; C. J. (1547-1628), 820; *ibid.* (1667-87), 411; 1 Hatsell, 167.

(*o*) Cases of Lords Warwick and Montague, L. J. (1620-28), 776, 777; *ibid.* (1647-48), 611.

(*p*) L. J. (1666-75), 194, 390; *ibid.* (1685-91), 36, 78; *ibid.* (1606-1701), 294; *ibid.* (1722-26), 412.

(*q*) Bassett's case, C. J. (1547-1628), 807; L. J. (1628-42), 654; *ibid.* (1645-46), 577, 601; Boteler's case, C. J. (1711-14), 6.

(*r*) 12 & 13 Will. 3, c. 3, afterwards extended by 11 Geo. 2, c. 24.

(*s*) Graham v. Sturt (1812), 4 Taunt., 249; Burton v. Atherton (1816), 2 Marsh, 232; Duncan v. Hill (1822), 1 Dow. & Ry. (K. B.), 126; and case of Mr. Feargus O'Connor, who offered himself as bail for Mr. Ernest Jones, 11th June, 1848, at Bow Street.

## DURATION OF PRIVILEGE

It remains to inquire what is the duration of the privilege of freedom from arrest; and it is singular that this important point has never been expressly defined by Parliament.

*Peers.*—The person of a peer “is for ever sacred and inviolable” by the privilege of peerage. This immunity rests upon ancient custom, and was recognized by the Acts 12 & 13 Will. 3, c. 3, and 2 & 3 Anne, c. 12. It would seem to have been an ancient feudal privilege of the barons, the law assuming that there would always be, upon the demesnes of their baronies, sufficient to distrain for the satisfaction of any debt (*t*).

The Lords, under standing orders Nos. LVII and LX, claim privileges for themselves “within the usual times of privilege of Parliament,” and for their servants, for twenty days before and after each session.

*Commons.*—With regard to members of the House of Commons, “the time of privilege” has been repeatedly mentioned in statutes, but never explained. It is stated by Blackstone and others, and has been the general opinion (founded, probably, upon the ancient law and custom, by which writs of summons for a Parliament were always issued at least forty days before its appointed meeting), that the privilege of freedom from arrest remains with a member of the House of Commons “for forty days after every prorogation, and forty days before the next appointed meeting” (*u*); and this extent of privilege has been allowed by the courts of law, on the ground of usage and universal opinion.

Thus in the case of a Member who had been, by a judge’s order, allowed his privilege, extending to forty days, the chief baron, on a motion for rescinding the order, maintained the privilege, and stated as the judgment of the court that “the period of forty days before and after the meeting of Parliament has, for about two centuries at least, been considered either a convenient time or the actual time to be allowed. Such has been the usage, the universally prevailing opinion on the subject; and such, we think, is the law” (*a*) (see also p. 119).

## AFTER DISSOLUTION

It has been determined by the courts of law that the privilege, even after a dissolution, is still enjoyed for a convenient and reasonable time for returning home (*b*). What this convenient time may be has never been determined; but the general claim of exemption from arrest, *eundo et redeundo*, extends as well to dissolutions as to prorogations, as no distinction is made between them.

## RETROSPECTIVE EFFECT OF THE PRIVILEGE

The above cases apply to arrests made after the privilege has accrued; but the effect of the election of a person already in execution still remains to be considered.

(*t*) 1 Bl. Com., 165; West, Inq., 27.

(*u*) 1 Bl. Com., 165. The right of franking letters, formerly enjoyed by Members, was by Act granted for the above-mentioned forty days. For a history of this right, see C. J. (1732–37), 462.

(*a*) Goudy v. Duncombe (1847), 1 Exch. at p. 435

(*b*) Barnard v. Mordaunt (1754), 1 Keny., 125.



*Thorpe's case.*—In Thorpe's case the judges excepted from privilege the case of "a condemnation had before the Parliament:" but their opinion has not been sustained by the judgment of Parliament itself. Unless a Member has incurred some legal disability, or has subjected himself to processes more stringent than those which result from civil actions, it has been held that his service in Parliament is paramount to all other claims.

*Holt's case and Burton's case.*—Thus in 1677, Sir Robert Holt was discharged, although he had been "taken in execution out of privilege of Parliament;" and, Mr. Christie Burton obtained his release in 1819, although he had been in the custody of the warden of the Fleet before his election (c).

**Persons under arrest becoming peers.**—A person succeeding to a peerage while under arrest is entitled to his discharge in virtue of his privilege.

*Lord Harley's case.*—On the 1st January, 1849, Lord Harley having succeeded, by the death of his father, to the earldom of Oxford, applied to a judge in chambers (Mr. Baron Platt), for his discharge from the Queen's Prison. It was submitted that he was not entitled to privilege until he had taken his seat as a peer: but this position could not be supported by any authorities, and the earl was ordered to be discharged (d).

It has been decided by the Lords, however, that a peer is not entitled to privilege when he has not qualified himself to sit, by taking the oaths (e).

## DISCONTINUANCE OF CERTAIN PRIVILEGES

### 1. FREEDOM FROM BEING IMPEADED

The privilege of not being impeaded was formerly maintained, as, for instance, during 8th Edward 2, by the issue of writs of supersedeas to the justices of assize, to prevent actions from being maintained against Members in their absence, by reason of their inability to defend their rights while in attendance upon the Parliament (f). At the beginning of the reign of James I, another practice was adopted. Instead of resorting to writs of supersedeas, the Speaker was ordered to stay suits by a letter to the judges (g), and sometimes by a warrant to the party also (h); and the parties and their attorneys who commenced the actions were brought, by the Serjeant, to the Bar of the House (i).

*Statutory modification.*—The privilege insisted upon in this manner continued until the end of the seventeenth century, when it underwent a considerable limitation by statute. The Act, 12 & 13, Will. 3, c. 3,

(c) C. J. (1667-87), 411; see Reports of Precedents, C. J. (1688-93), 401; *ibid.* (1806-7), 642, 653, 654; 2 Hatsell, 38; C. J. (1819), 44; *ibid.* (1819-20), 230.

(d) *M'Cabe v. Lord Harley*. Times newspaper, 2nd Jan., 1849.

(e) L. J. (1691-96), 91; *ibid.* (1718-21), 327.

(f) 1 Hatsell, 6, 7, 8. For proceedings with regard to issue of writs of supersedeas in 1588, see D'Ewes, 436.

(g) C. J. (1547-1628), 286, 381, 421, 525.

(h) C. J. (1547-1628), 804.

(i) C. J. (1547-1628), 304. For a refusal of the judges to obey the Speaker's letter, see Prynne, 4th Register, 810; C. J. (1547-1628), 861; 1 Hatsell, 184, 185. For cases in which Members waived their privilege and upon petitions from the parties suits were allowed to proceed, see C. J. (1547-1628), 378, 421, 595, etc.; *ibid.* (1688-93), 280, 300, 596; *ibid.* (1693-97), 557, etc.

enacted that any person might commence and prosecute actions against any peer, or member of Parliament, or their servants, or others entitled to privilege, in the court at Westminster, and the duchy court of Lancaster, immediately after a dissolution or prorogation, until the next meeting of Parliament, and during any adjournment for more than fourteen days; and that during such times the court might give judgment and award execution. Soon afterwards it was enacted, by 2 & 3 Anne, c. 12, that no action, suit, process, proceeding, judgment, or execution, against privileged persons, employed in the revenue, or any office of public trust, for any forfeiture, penalty, etc., should be stayed or delayed by or under colour or pretence of privilege of Parliament. The Act of William III had extended only to the principal courts of law and equity; but by the Parliamentary Privileges Act, 1737, all actions in relation to real and personal property were allowed to be commenced and prosecuted in the recess and during adjournments of more than fourteen days, in any court of record. Still more important limitations of the privilege were effected by the Parliamentary Privilege Act, 1770, whereby any person may at any time commence and prosecute an action or suit in any court of law against peers or Members of Parliament and their servants; and no such action or process shall be interfered with under any privilege of Parliament. It is also, however, enacted that nothing in the Act should subject the person of any Member of Parliament to arrest or imprisonment. Under this Act, and under the Acts 45 Geo. 3, c. 124, and 47 Geo. 3, scss. 2, c. 40, Members of Parliament may be coerced by every legal process, except the attachment of their bodies. By s. 128 of the Bankruptcy Act, 1914, persons having privilege of Parliament are subject to the processes of the court.

## 2. SERVANTS' PRIVILEGE

By the Parliamentary Privilege Act, 1770, a very important limitation of the freedom from arrest was effected. Down to that time the servants of Members had been entitled to all the privileges of their masters, except the protection afforded to Members by the Acts 1 Jas. 1, c. 13 and 2 & 3 Anne, c. 12 (see pp. 71-72); but by the 3rd section of the Act of 1770, the privilege of Members to be free from arrest upon all suits, authorized by the Act, was expressly reserved; while no such reservation was introduced in reference to their servants. Thus, without any distinct abrogation of the privilege, it was, in fact, put an end to, as executions were not to be stayed in their favour, and their freedom from arrest was not reserved.

## PRIVILEGES ANALOGOUS TO THAT OF FREEDOM FROM ARREST

Related to the privilege of freedom from arrest, and like it, based on the prior claim of the House to the service of its Members, are the privileges of resisting a subpoena to attend as a witness, and the privilege of exemption from jury service.

### 1. PRIVILEGE OF RESISTING A SUBPOENA

The claim to resist subpoenas upon the same principle as other personal privileges, viz., the paramount right of Parliament to the attendance and

service of its Members, was maintained in former times (*j*). This privilege is now always waived, as the non-attendance of a witness may affect the administration of justice. So far from withholding the attendance of Members as witnesses in courts of justice, the Commons grant leave of absence to their Members on the ground that they have been summoned as witnesses (*k*), and have admitted the same excuse for defaulters at calls of the House (*l*). But although this claim of privilege is not now enforced as regards other courts, one House will not permit one of its Members to be summoned by the other without a message desiring his attendance, or without the consent of the Member whose attendance is required (see p. 634); and it may be doubtful whether the House would not protect a Member served with a subpoena, from the legal consequences of non-attendance in a court of justice, if permission had not been previously granted for his attendance.

## 2. PRIVILEGE OF EXEMPTION FROM JURY SERVICE

As the withdrawal of a witness might affect the course of justice, the privilege has properly been waived (see above); but the service of Members upon juries not being absolutely necessary, their more immediate duties in Parliament are held to supersede the obligation of attendance in other courts (*m*), and this privilege has been confirmed by statute (see below).

*Holford's case*.—On the 20th February, 1826, Mr. Holford complained that he had been fined for non-attendance as a jurymen by the Court of Exchequer, his excuse that he was attending the service of Parliament not being admitted; and Mr. Ellice, another Member, stated that he had also been fined for non-attendance, in the same court. The House, on receiving the report of a Committee of Privileges resolved, *nem. con.*, that it is "amongst the most ancient and undoubted privileges of Parliament, that no Member shall be withdrawn from his attendance on his duty in Parliament to attend on any other court (*n*)."

*Viscount Enfield's case*.—In the case of Viscount Enfield, 6th February, 1861, Chief Justice Erle stated, that "his lordship ought not to have been summoned as a juror, as Members were not bound to serve in any other court than that in which they had been returned to serve, viz. the High Court of Parliament." See *Times* newspaper, 8th February, 1861.

Exemption, held good during an adjournment, was not ordinarily claimed by Members after a prorogation; and there was no distinct authority for its existence at that time; but by the Juries Act, 1870, peers and members of Parliament, and the officers of both Houses, are included among the persons exempted from serving on juries, without reference to the sitting of Parliament.

(*j*) 1 Parl. Hist., 630; D'Ewes, 347; 1 Hatsell, 96, 97, 169, 175; L. J. (1620-28), 630; C. L. (1547-1628), 34, 48, 203, 205, 211, 368, 1040, etc.; *ibid.* (1667-87), 339.

(*k*) C. J. (1801), 122; *ibid.* (1812-13), 218, 243, 292; *ibid.* (1816), 110; *ibid.* (1826-27), 306, 379; see also Parl. Deb. (1844), 73, c. 11, s. 433 (Earl of Devon).

(*l*) C. J. (1792-93), 318.

(*m*) West, Inq., 28.

(*n*) C. J. (1826), 82, 87, Parl. Deb. (1826) 14, c. 568, 569. See also case of Tracy, 1597, D'Ewes, 560, 1 Hatsell, 112; Sir W. Alford, 1628, C. J. (1547-1628), 898; Mr. Bennett, Parl. Deb. (1826) 14, c. 642; Mr. MacLeod, Parl. Deb. (1829) 21, c. 1770.

The Juries Act, 1922 (s. 2 (1)), provides that every person whose name is included in the jurors' book is liable to serve as a juror, notwithstanding he may have been entitled by reason of some exemption to claim that he ought not to be marked in the electors' list as a juror. This, however, does not affect the right of the House to treat as a breach of its privileges any refusal to excuse a Member who is summoned as a juror from attending or serving, or any attempt to punish him for not attending or for refusing to serve as a juror. Indeed, as "every man is obliged at his peril to take notice who are Members of either House returned of record" (o), it would appear that the mere summoning of a Member to serve on a jury would constitute a breach of privilege.

#### PRIVILEGE OF FREEDOM FROM ARREST NOT CLAIMED IN RESPECT OF CRIMINAL OFFENCES

The privilege of freedom from arrest is limited to civil causes, and has not been allowed to interfere with the administration of criminal justice.

In early times the distinction between "civil" and "criminal" was not clearly expressed. It was only to cases of "treason, felony and breach (or surety) of the peace" that privilege was explicitly held not to apply (see p. 67). Originally the classification may have been regarded as sufficiently comprehensive. But in the case of misdemeanours, in the growing list of statutory offences, and, particularly, in the case of preventive detention under emergency legislation in times of crisis, there was a debatable region about which neither House had until recently expressed a definite view.

"A review of the development of the privilege reveals a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the Commons in a conference with the Lords in 1641: 'Privilege of Parliament is granted in regard of the service of the Commonwealth and is not to be used to the danger of the Commonwealth' (C. J. (1640-42), 261"; H. C., 164, p. 7 (1939-40)).

In Larke's case, in 1429, the privilege was claimed, "except for treason, felony, or breach of the peace;" and in Thorpe's case, the judges made exceptions to such cases as be "for treason, or felony, or surety of the peace." (p).

The privilege was thus explained by a resolution of the Lords, 18 April, 1626: "That the privilege of this House is, that no peer of Parliament, sitting the Parliament, is to be imprisoned or restrained, without sentence or order of the House, unless it be for treason or felony, or for refusing to give surety of the peace" (q); and again, by a resolution of the Commons, 20 May 1675, "that by the laws and usage of Parliament, privilege of Parliament belongs to every Member of the House of Commons, in all cases except treason, felony, and breach of the peace" (r). On the 14th April

(o) 4 Co. Inst., 24.

(p) 4 Rot. Parl., 357; 5 *ibid.*, 239.

(q) L. J. (1620-28), 562.

(r) C. J. (1667-87), 342; see also Declaration by the Commons, 17th August, 1641, C. J. (1640-42), 261.

1697, it was resolved, "That no Member of this House has any privilege in case of breach of the peace, or forcible entries, or forcible detainers" (s).

#### PRIVILEGE OF FREEDOM FROM ARREST DISCLAIMED IN RESPECT OF SEDITIOUS LIBELS

In connection with John Wilkes' case, on the 29th November 1763, although the Court of Common Pleas had decided otherwise (t), it was resolved by both Houses,

"That privilege of Parliament does not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of the laws in the speedy and effectual prosecution of so heinous and dangerous an offence" (u).

"Since that time," said the committee of privileges, in 1831, "it has been considered as established generally, that privilege is not claimable for any indictable offence (a)."

#### RESTRICTION OF THE PRIVILEGE IN RESPECT OF OTHER CRIMINAL OFFENCES

These being the general declarations of the law of Parliament, one case will be sufficient to show how little protection is practically afforded by privilege in criminal offences, and that the House will not allow even the sanctuary of its walls to protect a Member from the process of criminal law; though, as is mentioned later (p. 119), a service of a criminal process on a Member within the precincts of Parliament, whilst the House is sitting, may be a breach of privilege.

*Lord Cochrane's case.*—In 1815, Lord Cochrane, a Member, having been indicted and convicted of a conspiracy, was committed by the Court of King's Bench to the King's Bench Prison. Lord Cochrane escaped, and was arrested by the marshal, whilst he was sitting on the privy councillors' bench, in the House of Commons, on the right hand of the chair, at which time there was no Member present, prayers not having been read. The case was referred to the Committee of Privileges, who reported that it was entirely of a novel nature, and that the privileges of Parliament did not appear to have been violated, so as to call for the interposition of the House, by any proceedings against the marshal of the King's Bench (b).

#### HOUSE TO BE INFORMED OF ARRESTS ON CRIMINAL CHARGES

In all cases in which Members are arrested on criminal charges, the House must be informed of the cause for which they are detained from their service in Parliament. Several Acts which have suspended for a time a Habeas Corpus Act, have contained provisions to the effect that no Member of Parliament shall be imprisoned during the sitting of Parliament, until the matter of which he stands suspected shall be *first*

(s) C. J. (1693-97), 784.

(t) 2 Wils., 150; 19 State Tr., 981.

(u) L. J. (1760-64), 426, C. J. (1761-64), 689, 15 Parl. Hist., 1362-1378.

(a) C. J. (1830-31), 701; see also case of Lord Oliphant, in 1709, L. J. (1709-14), 31, 34; and *ibid.* (1741-46), 492 (Gaming-houses).

(b) C. J. (1814-15) 186; Parl. Deb. (1814-15) 30, c. 309, 336; Colchester, ii, 534, 536.

communicated to the House of which he shall be a Member, and the consent of the said House obtained for his commitment (c). By the Protection of Person and Property Act, 1881, it was provided that "if any Member of either House of Parliament be arrested under this Act, the fact shall be immediately communicated to the House of which he is a Member, if Parliament be sitting at the time, or if Parliament be not sitting, then immediately after Parliament reassembles, in like manner as if he were arrested on a criminal charge." The arrests of Members under this Act, as long as it remained in force, were communicated to the House of Commons accordingly (d). In cases not affected by Acts of this special character, it has been usual to communicate the cause of commitment of a Member after his arrest; and whenever Members are in custody in order to be tried by naval (e) or military (f) courts-martial, or have been committed to prison for any criminal offence by a court (g) or magistrate (h). In the case of commitments for military offences, the communication is made by royal message (see p. 782, n). In the case of naval courts-martial this communication is made by the lord high admiral or the lords commissioners of the Admiralty, by whom the warrants are issued for taking the Members into custody; and copies of the warrants are, at the same time, laid before the House.

#### HOUSE TO BE INFORMED OF SENTENCES FOR CRIMINAL OFFENCES

The committal of a Member for high treason (i) or any criminal offence is brought before the House by a letter addressed to the Speaker by the committing judge or magistrate. On these occasions, the first communication to the Speaker is made when the Member is committed to prison, bail not being allowed (j); and subsequently, if the Member be not released from custody, or acquitted, the judge informs the Speaker of the offence for which the Member was condemned, and

(c) See 17 Geo. 2, c. 6; 45 Geo. 3, c. 4, s. 2; 57 Geo. 3, c. 3, s. 4; 57 Geo. 3, c. 55, s. 4; 3 Geo. 4, c. 2, s. 4.

(d) Mr. Dillon, C. J. (1881) 213, 260; Parl. Deb. (1881) 260, c. 1744. Mr. Parnell, Mr. Sexton, Mr. O'Kelly, and Mr. Dillon, also the release of Mr. Sexton, C. J. (1882), 8; Parl. Deb. (1882) 266, c. 98. A motion for a committee of inquiry was negatived, *ibid.* Arrest of Mr. William O'Brien, C. J. (1887), 552.

(e) C. J. (1778-80), 57; *ibid.* (1795-96), 557; *ibid.* (1806-7), 145; *ibid.* (1809), 214; *ibid.* (1812), 246, etc.; L. J. (1809-10), 349 (Lord Gambier); and see case of Lord Torrington, *ibid.* (1685-91), 521, 523, 525, 527.

(f) C. J. (1782-84), 479; *ibid.* (1795-96), 139; *ibid.* (1802-3), 597; *ibid.* (1803-4), 33; *ibid.* (1814-15) 70; *ibid.* (1940-41) 178.

(g) Mr. Hcely, C. J. (1883), 4. A motion for a committee of inquiry was negatived, *ibid.* Arrest of Members for offences against Defence of the Realm Regulations and sentences thereunder, see C. J. (1918), 227; C. J. (1919), 59, 61, 170, 320, 325, 339; *ibid.* (1920), 61, 78, 96, 98, 390, 451, 452, 472; *ibid.* (1921), 29, 54; under Restoration of Order in Ireland Regulations, *ibid.* (1921), 27, 102; under an Order made pursuant to an Act of the Parliament of Northern Ireland, *ibid.* (1922), 345; *ibid.* (1924), 17.

(h) Mr. F. O'Connor, C. J. (1852), 28; *ibid.* (1902), 3, etc. See also *ibid.* (1916), 227; *ibid.* (1918), 44; *ibid.* (1919), 16, 116, 183, 184, 209, 325, 361; *ibid.* (1920), 88, 439; *ibid.* (1926) 166; H. C. Deb. (1926) 195, c. 601. The communication has been made by the clerk to the court, C. J. (1919), 116, 183, 325; *ibid.* (1920), 88.

(i) Case of Mr. Arthur Lynch, C. J. (1902), 281. See Mr. Speaker's ruling, 12th June, 1902, as to the sufficiency of a similar communication in cases of high treason as in other criminal offences, Parl. Deb. (1919) 109, c. 480.

(j) Parl. Deb. (1914) 113, c. 234.

the sentence that has been passed upon him (*k*). Where a Member is convicted but released on bail pending an appeal, the duty of the magistrate to communicate with the Speaker does not arise. No duty of informing the Speaker arises in the case of a person who while in prison under sentence of a court is elected as a Member of Parliament (*l*); but when a notification has been made to the Speaker in such circumstances he has communicated it to the House (*m*).

In the case of Lord George Gordon the communication was made by a royal message, C. J. (1778–80) 903, and in the case of Mr. Smith O'Brien by a letter from the Lord-Lieutenant of Ireland, *ibid.* (1847–48) 888. In the case of the arrest of four Members in Ireland and their internment under Regulation 14B of the Defence of the Realm Regulations, the communication was made to the Speaker by a letter from the chief secretary to the Lord Lieutenant of Ireland which was read to the House by the Speaker, C. J. (1918) 105; H. C. Deb. (1918) 106, c. 1235. See also C. J. (1939–40) 140. For other communications in respect of preventive detention by the executive see references in H. C. 164, p. 3. (1939–40).

#### HOUSE TO BE INFORMED OF ISSUE OF ATTACHMENT ORDER FOR CONTEMPT OF COURT

In the case of an attachment order for contempt of court (see p. 82), the judge informs the Speaker that such an order has been issued, but cannot certify to him when the arrest actually takes place, for the issue of the order is left at the discretion of the applicant for such an order, which is placed, when issued, in the sheriff's hands for execution.

#### CASES OF CONTEMPT OF COURT

A contempt of a court of justice is an offence, partaking of a criminal character; and it was for some time doubtful how far privilege would extend to the protection of a Member committed for a contempt.

#### CASES IN THE HOUSE OF LORDS

*Lord Cromwell's case.*—In the case of Henry, Lord Cromwell, 30th June, 1572, who had been attached by the sheriff of Norfolk, by a writ of attachment from the Court of Chancery, for not obeying an injunction of that court, though the Lords ordered Lord Cromwell to be discharged of the attachment, they declared that if at any future time cause should be shown that by the queen's prerogative, or by common law or custom, or by any statute or precedents, the persons of lords of Parliament are attachable, the order in this case should not affect their decision in judging according to the cause shown (*n*).

*Lord Vaux's case.*—On the 9th February, 1625, the Lord Vaux claimed his privilege, for stay of the proceedings in an information against him in the Star Chamber; and it was granted (*o*).

(*k*) Captain Verney, C. J. (1890–91), 268; Mr. Hastings, *ibid.* (1892), 101; Mr. Lynch, *ibid.* (1903) 3; in case of misdemeanour Mr. Bottomley, *ibid.* (1922), 183.

(*l*) H. C. Deb. (1917–18) 93, c. 1786.

(*m*) C. J. (1922) 345; *ibid.* (1924) 17.

(*n*) L. J. (1509–77), 727; *ibid.* (1628–42), 27; *ibid.* (1666–75), 122; Prynne, 4th Register, 792; case of Duchess of Sutherland, 18th April, 1893.

(*o*) L. J. (1620–28), 496; see also the case of Lord Arundel, *ibid.* 558 (Report of Precedents), 562, etc.

By standing order No. LXXII, 8th June, 1757, no peer or lord of Parliament has privilege of peerage, or of Parliament, against being compelled to pay obedience to a writ of habeas corpus directed to him, and an attachment may be granted, if a peer refuses obedience to such a writ (*p*).

The courts will not grant an attachment against a peer or member of Parliament (see p. 82) for non-payment of money according to award. 7 Term. Rep. 171, 448. See *dicta* of Lord Brougham, in *Westmeath v. Westmeath* (1831), 9 L. J. (ch.) 177. Contempt of court committed by privileged persons was formerly punished by sequestration of their property, case of the Countess of Shaftesbury, 2 P. Wms. 110.

#### CASES IN THE HOUSE OF COMMONS

*Brereton's case*.—In 1605, in the case of Mr. Brereton, who had been committed by the Court of King's Bench for a contempt, the Commons brought up their Member by a writ of habeas corpus, and received him in the House (C. J. (1547-1628), 269; see also Bampfield's case, *ibid.* 466).

In more recent cases, Members committed by courts for open contempt have failed in obtaining their release by virtue of privilege:—

*Long Wellesley's case*.—In 1831 a Member, committed for contempt for having taken his daughter, a ward in Chancery, out of the jurisdiction of the Court of Chancery, claimed privilege. The Lord Chancellor had informed the Speaker of this commitment. The Committee of Privileges reported that the claim ought not to be admitted (C. J. (1830-31) 701).

*Lechmere Charlton's case*.—In 1837 the Lord Chancellor informed the Speaker by letter that a Member had been committed for contempt in writing a scandalous letter which also attempted to influence the decision of the Court of Chancery. As the Lord Chancellor's order for committal did not set forth the letter, the Committee of Privileges, to whom the matter was referred, directed it to be produced, as "it was necessary that the House of Commons should be informed of the particulars of the contempt," but the Committee reported against the claim of privilege. (C. J. (1837) 3 *et seq.*; H. C. 45, (1837).

*Whalley's case*.—In 1874 a member was committed for contempt by the Court of Queen's Bench and discharged again at a time when Parliament was not sitting. When Parliament met, the Lord Chief Justice informed the Speaker by letter of the event. The Committee of Privileges reported that the Lord Chief Justice "fulfilled his duty in informing the House," although the House was not sitting at the time. The Committee also reported that the matter did not demand the further attention of the House. (H. C. 77 (1874); Parl. Deb. (1874) 218, c. 52 & 108).

*Gray's case*.—In 1882 a letter from a judge, sitting under a commission in Dublin, informed the Speaker that a Member had been committed for contempt of court for publishing certain articles calculated to prejudice the course of justice. The Committee of Privileges reported that the matter did not demand the further attention of the House. (C. J. (1882) 487 & 491; Parl. Deb. (1882) 273, c. 1978, 2049; *ibid.* 274, c. 34; H. C. 406 (1882); see also case of Mr. T. M. Healy's imprisonment, C. J. (1883) 4).

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(*p*) *Rex v. Earl Ferrers*, 1 Burr., 631; see statement in *Bac. Abr.* vi, 546; 2 Hawk., P.C., c. 22, s. 33.



*McHugh's case.*—In 1902 a resident Irish magistrate committed McHugh, a Member, for his refusal to enter into recognizances to be of good behaviour, and informed the Speaker by letter. A select committee reported that there was no difference in principle between this case and the foregoing cases, that McHugh's contempt was of a criminal and not civil character and that no distinction could be drawn between cases of criminal contempt and other indictable offences. (C. J. (1902) 300; H. C. 309 (1902); see also Ginnell's case C. J. (1908) 3; Parl. Deb. (1908) 183, c. 82; and McCabe's case C. J. (1920) 88. As to what is criminal contempt, see 15 P.D. 59; 32 L. R. Ir. 220).

#### CASES OF ATTACHMENT ORDERS FOR CONTEMPT OF COURT AND OF FINES

*Davis's case.*—In 1888, a Member was imprisoned under an attachment order for contempt of court in appropriating moneys received by him as receiver, appointed by the Court of Chancery (C. J. (1888) 488).

*McHugh's case.*—In 1902, another Member was imprisoned under an attachment order for contempt of court (C. J. (1902) 175; *ibid.* (1903) 219; Parl. Deb. (1903) 123, c. 309).

*Onslow's case and Whalley's case.*—In 1873, the Court of Queen's Bench fined two Members of the House of Commons for a contempt of that court, when Chief Justice Cockburn stated that the court would not have been restrained by privilege from committing these Members if it had thought fit.

#### LIMITATION ON POWER OF COURTS TO COMMIT MEMBERS FOR CONTEMPT

It must not, however, be understood that either House has waived its right to interfere when Members are committed for contempt. Each case is open to consideration when it arises; and although protection has not been extended to flagrant contempts, privilege might still be allowed against commitment under any civil process, or if the circumstances of the case appeared otherwise to justify it.

It is only in cases of quasi-criminal contempts that Members of either House may be committed, without an invasion of privilege. Such a commitment, as part of a civil process for the recovery of a debt, will not be resorted to by a court, nor would it be allowed in Parliament. This view has been adopted both by statute and by decisions of the court.

By the Ecclesiastical Courts (Contempt) Act, 1832, an Act for enforcing the process of contempts in matters ecclesiastical, an exception is made from committal for contempt of court in behalf of peers or members of Parliament.

*Mr. Harrison's case.*—In 1880, on application being made for a committal order against a Member, for contempt, in not having complied with an order of the court for payment of certain moneys, and the delivery of documents to the liquidator of a company, it was held that privilege protected a member, except in cases of a gross character, and that the contempt, in this case, was not such as to justify the court in committing a Member. On that same day Parliament was dissolved, and Mr. Harrison did not seek re-election. Three weeks later application was again made to the court for his commitment: but the court held that privilege extended to a period of forty days after a prorogation or dissolution of Parliament, and as that

time had not yet expired, they refused to entertain the motion, on the ground of privilege, and without reference to the merits of the case (g).

A case affecting a peer had been similarly decided by the Brompton County Court, in 1879.

### EFFECT OF PRIVILEGE ON BANKRUPTCY OF MEMBER

The same distinction between civil and criminal processes was formerly observed in the case of bankrupts. By the Bankruptcy Law Consolidation Act, 1849, s. 66, it was enacted that, "If any trader having privilege of Parliament shall commit any act of bankruptcy, he may be dealt with under the Act in like manner as any other trader; but such person shall not be subject to be arrested or imprisoned during the term of such privilege, except in cases made felonies and misdemeanours by this Act." But it was enacted by the Bankruptcy Act, 1869, s. 120, and by the Bankruptcy Act, 1883, s. 124, that a person having privilege of Parliament was to be dealt with as if he had not such privilege, and this provision has been re-enacted by s. 128 of the Bankruptcy Act, 1914.

### PRIVILEGE EXTENDED FROM MEMBERS TO OTHER PERSONS

As yet the personal privilege of Members, and the ancient privilege of their servants, have alone been noticed. These were founded upon the necessity of enabling Members freely to attend to their duties in Parliament. Upon the same ground, a similar privilege of freedom from arrest and molestation is attached to all witnesses summoned to attend before either House of Parliament, or before parliamentary committees, and to others in personal attendance upon the business of Parliament, in coming, staying, and returning; and to officers of either House, in immediate attendance upon the service of Parliament (r). In the early journals there are numerous orders that all persons attending in obedience to the orders of the House, and of committees, shall have the privilege or protection of the House (s). A few precedents will serve to explain the nature and extent of this privilege.

### CASES ILLUSTRATING EXTENSION OF PRIVILEGE TO WITNESSES AND OTHERS

*Crosbie's case*.—In 1640, Sir Pierce Crosbie, sworn as a witness in Lord Strafford's cause, being threatened with arrest, was allowed privilege, "to protect him during the time that this House examine him." (t)

*Lake's case*.—In 1641, it was ordered that Sir T. Lake, who had a cause depending, should "have liberty to pass in and out unto the House, and to his counsel, solicitor, and attorney, for and during so long time only as his cause shall be before their lordships in agitation;" and many similar

(g) 14 Ch. D., 533. See also *In re Armstrong, ex parte Lindsay*, 8 Morr., 271, and report of proceedings in Westminster County Court on a committal order, Times newspaper, 10th February, 1892.

(r) Lex. Parl., 380; 1 Hatsell, 9, 11, 172.

(s) C. J. (1547-1628), 505; *ibid.* (1640-42), 107; *ibid.* (1667-87), 62; *ibid.* (1699-1702), 521, etc.

(t) L. J. (1628-42) 143, 144.

orders have been made in the case of other parties, who have had causes depending, or bills before the House (*u*).

*Case of the Feltmakers Company.*—On the 12th May, 1624, the master and others of the Feltmakers Company were ordered, by the Commons, to be enlarged from the custody of the warden of the Fleet, for the prosecution of a bill then depending, "till the same be determined by both Houses" (*a*). In the same manner, in 1628, 1640 and 1758, privilege was extended to persons who had petitions or bills depending (*b*). Numerous instances have occurred, in which witnesses, who have been arrested on their way to or from Parliament, or during their attendance there, have been discharged out of custody (*c*); and the same protection is extended, not only to parties, but to their counsel, solicitors and agents, in prosecuting any business in Parliament (*d*).

*Petrie's case.*—In 1793 Petrie was a petitioner in a controverted election, claiming to sit for the borough of Cricklade. Having received the usual notice to attend, by himself, his counsel or agents, he attended the sittings of the election committee as a party in the cause. He was arrested before the committee had closed their inquiries; and the House, after receiving a report of precedents, ordered, *nem. con.*, that he should be discharged out of the custody of the sheriff of Middlesex (*e*).

#### PRECEDENT OF ARREST OF WITNESS

In 1819, Thomas Stinton, a soldier examined before the Worcester Election Committee, was arrested by the sergeant of his regiment, in the lobby, for absenting himself from drill. There were, however, other circumstances in the case, which induced the House not to regard this as a breach of privilege (*f*).

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(*u*) L. J. (1628-42) 262, 263, 289, 330, 477; *ibid.* (1642-43) 476, 563, 574, 653, 680; *ibid.* (1736-41) 625; *ibid.* (1746-52) 19, 538; *ibid.* (1753-56) 512.

(*a*) C. J. (1547-1628), 702; Bryer's case, *ibid.*, 863.

(*b*) C. J. (1547-1628), 921, 924; *ibid.* (1640-42), 72; *ibid.* (1699-1702), 512; *ibid.* (1757-61), 244.

(*c*) C. J. (1660-67), 525; *ibid.* (1667-87), 20, 366, 472; *ibid.* (1697-99), 364, 610; *ibid.* (1810-11), 226, 232; *ibid.* (1835), 521.

(*d*) L. J. (1856) 189; *ibid.* (1860) 75, 76; C. J. (1667-87) 472; *ibid.* (1741-45) 170; *ibid.* (1750-54) 797; *ibid.* (1754-57) 447, 537, 548. Similar protection is given by courts of law, even in arbitration cases, to witnesses, etc., Court of Q. B. *in banco*, 7 November 1857.

(*e*) C. J. (1792-93), 426.

(*f*) Parl. Deb. (1819) 39, c. 1168, 1226.

## CHAPTER VI

### MINOR PRIVILEGES CLAIMED FOR THE COMMONS

#### FREEDOM OF ACCESS

A privilege among the claims enumerated in the Speaker's Petition since 1536 (see p. 44), which at first sight might appear to be a matter of courtesy, but which, in fact, in the particular form claimed by the Commons, was from the first essential to their constitution as a House of Parliament, and a necessary corollary to the privilege of freedom of speech, is that of freedom of access to the king.

The privilege of freedom of access is exercised by the House as a body and through their Speaker.

"To have at all times the right to petition, counsel, or remonstrate with their sovereign through their chosen representative and have a favourable construction placed on his words was justly regarded by the Commons as a fundamental privilege." (White, *Eng. Const.*, pp. 438-9).

The right of access to the king in Parliament is not now exercised on the initiative of the Commons. They attend the king on summons to the House of Lords, for purposes prescribed by his Majesty. In the medieval Parliament the occasion was sometimes used by the Commons for purposes of their own.

"In the times of Richard II, Henry IV, and downwards, the Commons, with the Speaker, were ever admitted to the king's presence in Parliament to deliver their answers; and oftentimes, under Richard II, Henry IV, and Henry VI, they did propound matters to the king which were not given them in charge to treat of" (Elsynge, 175, 176).

Under present usage the Commons exercise the right of access to the king out of Parliament for the purpose of presenting addresses (see p. 789). These may deal with any subject of public policy which the Commons may choose; and have even, in the past, been drawn in the form of, or accompanied by, remonstrances expressing the grievances of the Commons of England.

The privilege of access is enjoyed by the House at large, with their Speaker (see below p. 86); and is exercised, in fact, when an address is presented to the king by the whole House. Without this privilege it is undeniable that the king might refuse to receive such an address presented in that manner; and that, so far as the attendance of the whole House may give effect to an address, it is a valuable privilege. More usually, addresses of the House are communicated to the sovereign by any Members who have access to him as privy councillors or as members of his Majesty's household.

The only right claimed and exercised by individual Members, in availing themselves of the privilege of access to the king, is that of accompanying

the Speaker with addresses, and entering the presence of royalty, in their ordinary attire. Such a practice is, perhaps, scarcely worthy of notice, but it is probably founded upon the concession to the House of Commons of a free access to the throne which may be supposed to entitle them, as Members, to dispense with the forms and ceremonies of the court.

### RIGHT OF ACCESS DENIED TO INDIVIDUAL MEMBERS

The privilege of freedom of access also has certain negative aspects which are not without their importance.

Denial of the right of access to individual Members has as a consequence that the king receives only the decisions of the whole House and cannot take notice of matters pending in the House, still less of debates or the speeches of individual Members.

In the reply of Henry IV in 1401 to an address by the Speaker, Sir Arnold Savage, the king declared, "that it was his will that the said Commons should have deliberation and advice, to discuss and treat of all matters among themselves, in order to bring them to a better end and conclusion, in so far as they know how, for the welfare and honour of himself and of all his realm. And that he would not hear any such person (i.e. any individual tale-bearer) or give him credence, before such matters had been shown to the king, by the advice and with the assent of all the Commons, according to the purport of their said prayer" (3 R. P. 456, see 3 Stubbs C. H. (1896 edition) 30).

In 1641 the Commons resolved,

"That the privilege of Parliament was broken by his Majesty's taking notice of the Bill for pressing, being in Agitation in both Houses, and not agreed upon."

and also,

"That the privilege of Parliament is broken, in that his Majesty did express his displeasure against some Persons for Matters moved or debated in Parliament during the Debate and preparation of that Bill." (C. J. (1640-42) 345).

The Commons exercise the right to exclude the king from access to their deliberations.

Although the king may at any time be present in the House of Lords without infringing any constitutional principle, and is in fact so present at the opening of Parliament or of a session, the Commons have long established the principle that the king may not, even as a spectator, attend their debates. (*Cf.* Objection to the attendance of the Prince Consort; for notes on attendance of the king in the Lords see 2 Hatsell, 371 n.).

*Position of Lords in relation to the privilege.*—Far different is the privilege enjoyed by the House of Peers. Not only is that House, as a body, entitled to free access to the throne, but each peer, as one of the hereditary counsellors of the Crown, is individually privileged to have an audience of the king (see p. 34).

This right is, in its origin, pre-parliamentary, and derives from membership of the feudal Great Council, in which the barons formed the predominant element.

### FAVOURABLE CONSTRUCTION OF COMMONS' PROCEEDINGS

The inclusion in the Speaker's petition of the request that all the proceedings of the Commons may receive from his Majesty the most

favourable construction, descends from an earlier form in which the Speaker prays that any offence given to the king by his communications on behalf of the Commons, be ascribed to his "folly and ignorance (*a*)" or "fault or imbecility in declaring the meaning (*b*)" of the Commons, and that he might be permitted to supply a corrected version. This was a valuable right for the Commons in dealing with Tudor and Stuart sovereigns, when the practice still existed of addressing the king in words composed by the Speaker rather than by the House. But now the request is little more than a formal courtesy; as the proceedings of the House are guarded against any interference, on the part of the Crown, not authorized by the laws and constitution of the country; and as by the law and custom of Parliament the king cannot take notice of anything said or done in the House, but by the report of the House itself (see p. 429).

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(*a*) Sir Arnold Savage, 1401, see White *op. cit.* 438.

(*b*) The Speaker in 1562, see White, 438

## CHAPTER VII

# PENAL JURISDICTION OF THE HOUSES OF PARLIAMENT

### POWER TO INFLICT PUNISHMENT FOR CONTEMPT

The main privileges of Parliament, including the great privileges of freedom of speech and freedom from arrest, having been described, it is now time to deal with the means by which each House protects its privileges and punishes their violation. This power is akin in nature and origin to the powers possessed by the courts of justice to punish for contempt.

Each of the two Houses of Parliament has power to punish its Members for disorderly conduct and other contempts committed in the House while it is sitting, and one method of punishment is committal either to the custody of its own officers or to one of His Majesty's prisons. The penal jurisdiction of the Houses is not confined to their own Members nor to offences committed in their immediate presence, but extends to all contempts of the Houses, whether committed by Members or by persons who are not Members, irrespective of whether the offence is committed within the House or beyond its walls (a).

It is necessary to emphasize the fact that the power possessed by each of the Houses is a general power of committing for contempt analogous to that possessed by the superior courts, and is not restricted to cases in which the privileges enjoyed by the House, in its collective capacity or by its Members as such, have been violated, lest a contrary inference should be drawn from the fact that in recent years nearly all the offences that have been punished by either House have been adjudged to be breaches of privilege (b). An examination of the cases in question shows that in the majority of them there was no actual infringement of any parliamentary privilege, though in many the exercise of one of those powers of the Houses collectively which are also termed privileges had been obstructed or impeded, while others again merely tended to obstruct either House or individual Members of a House in the exercise of their constitutional functions. Such offences were formerly designated contempts (c), but have long been termed "breaches of privilege," though that term is properly applicable only to that type of contempt which consists in the

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(a) In some cases the fact that the act is done within the precincts of the House is the essence of the offence. Thus the arrest of a Member on a criminal charge, if effected within the precincts of the House *sedente domo*, would constitute a contempt, but not if it took place beyond the walls of Parliament, see Report from the Select Committee on the Official Secrets Acts, H. C. 101, p. 23 (1938-9).

(b) For recent instances where offences were adjudged contempts, see L.J. (1870), 77; C. J. (1852), 178.

(c) See, for instance, L. J. (1767-70), 575; C. J. (1746-50), 308; *ibid.* (1770-72), 208.

violation or disregard of privileges of either House or the individual Members thereof (*d*).

In this section the development and definition of the penal jurisdiction of Parliament will be explained, the current procedure in the matter being left to a subsequent chapter (Chapter VIII).

#### DIFFERENCES IN PUNISHMENTS INFLICTED BY LORDS AND COMMONS

While both Houses agree in regarding the same offences as breaches of privilege, in several important particulars there is a difference in their modes of punishment. The Lords have claimed to be a court of record and, as such, not only to imprison, but to impose fines. They also imprison for a fixed time, and order security to be given for good conduct; and their customary form of commitment is by attachment. The Commons, on the other hand, commit for no specified period, and during the last two centuries have not imposed fines (see p. 101).

There can be no question that the House of Lords, in its judicial capacity, is a court of record; but, according to Lord Kenyon, "when exercising a legislative capacity, it is not a court of record" (*e*). Whether the House of Commons be, in law, a court of record, it would be difficult to determine; for this claim, once firmly maintained, has latterly been virtually abandoned, although never distinctly renounced.

*Fitzherbert's case*.—In Fitzherbert's case, in 1592, the House resolved, "That this House being a court of record, would take no notice of any matter of fact at all in the said case, but only of matter of record;" and the record of Fitzherbert's execution was accordingly sent to the House by the lord keeper. The apology of the Commons, 1604, contains these words: "We avouch also that our House is a court of record, and ever so esteemed (*f*)."

*Jones v. Randall*.—On the other hand, in *Jones v. Randall* (*g*), Lord Mansfield said the House of Commons was not a court of record; yet acting as a court of record, the Commons formerly imposed fines and imprisoned offenders for a time certain (*h*).

#### COMMITMENT

The power of commitment is truly described as the "keystone of parliamentary privilege." As was said in the Commons in 1593, "This court for its dignity and highness hath privilege, as all other courts have. And, as it is above all other courts, so it hath privilege above all other courts; and as it hath privilege and jurisdiction too, so hath it also Coercion and Compulsion; otherwise the jurisdiction is nothing in a court, if it hath no Coercion." (*i*)

Without it the privileges of Parliament could not have become self-subsistent, but, if they had not lapsed, would have survived on sufferance. It has been used not only against private individuals, but also against

(*d*) Selden's Table Talk (Selden Soc. ed. 1927), pp. 90, 91.

(*e*) Flower's case (1799), 8 Term. Rep., 314.

(*f*) D'Ewes, 502; 1 Hatsell, 233; see also Sir E. Coke's statement, C. J. (1547-1628), 604.

(*g*) 1 Cowp., 17.

(*h*) Smalley's case, 1575; Hall's case, 1580; C. J. (1547-1628), 112, 113, 125, 126; also *ibid.* (1651-60), 531, 591; *ibid.* (1667-87), 543, 687, 737; *ibid.* (1688-93), 84; *ibid.* (1697-99), 255, 256; D'Ewes, 366.

(*i*) D'Ewes, Journals, p. 145.



sheriffs, magistrates and even judges of the superior courts (*j*); apart from its active exercise, the existence of the power of commitment lay at the back of the summary procedure by which, before a statutory remedy was provided, the Commons released from custody Members arrested in breach of privilege (*k*), and by which, it must be owned, in the heyday of privilege, both Houses attempted to give a special sanctity to the property of their Members by themselves punishing trespasses for which the common law provided the proper remedy. But the main value of the power lay in upholding the dignity of Parliament and defending it against disrespect and affronts which could not be brought or could only be brought by implication, under the head of any specific privilege.

"The effect of immediate punishment and example is required to prevent the evils necessarily arising from this offence (libelling Parliament or members of Parliament), which evil it is obvious would be much less effectually guarded against by the more dilatory proceedings of the ordinary courts of law." (Second Report of the Select Committee on Proceedings relative to Sir Francis Burdett, 1810; see 1 Hatsell, Appendix 6).

As Lord Ellenborough observed in *Burdett v. Abbott*, "Could it be expected . . . that the Speaker with his mace should be under the necessity of going before a grand jury to prefer a bill of indictment for the power of self-vindication and self-protection in their own hands . . ." (14 East, p. 150-1).

#### ORIGIN

The origin of a power which is judicial in its nature is to be found naturally in the medieval conception of Parliament as primarily a court of justice—the "High Court of Parliament." Of this court the Lords were, with the barons of the Exchequer and the judges of the two benches, original members in virtue of their membership of the more ancient Curia Regis. The House of Lords therefore possessed the power of commitment by at least as good a title as any court of Westminster Hall (*l*). But the Commons, "newcomers to Parliament" within the time of judicial memory, could not claim the power on grounds of immemorial antiquity. As late as 1399 they had recorded their protest that they were not sharers in the judgments of Parliament, but only petitioners (*m*). The possession of the right by the Commons was challenged on this ground (*n*), and was defended by arguments which confounded legislative with judicial jurisdiction (*o*). It was probably owing to the medieval inability to conceive of a constitutional authority otherwise than as in some sense a court of justice that the Commons succeeded in asserting their right to commit offenders on the same terms as the Lords. In any case they are found freely exercising this right from the beginning of Elizabeth's reign (*p*), and even earlier if

(*j*) E.g. two judges of the King's Bench in 1689 for their decision in *Jay v. Topham*

(*k*) *Ferrers' case*, 1543; *Shirley's case*, 1603; *Smalley's case*, 1575.

(*l*) It was questioned in the cases of the Earl of Shaftesbury, 1675 (6 St. Tr. 1269), and of *Flower*, 1779 (8 Term Rep., 314); but it was admitted without hesitation by the Court of King's Bench.

(*m*) 3 Rot. Parl., 427.

(*n*) *Holford in Burdett v. Abbott* (14 East 1).

(*o*) Sir R. Atkyn's Argument in the case of Sir W. Williams (13 St. Tr. 1380).

(*p*) C. J. (1547-1628), 59.

Holinshed's account of their proceeding in Ferrers' case is to be trusted (see p. 98). It is calculated that over a thousand instances of its exercise up to the middle of the nineteenth century are to be collected from the Journals (q).

#### RECOGNITION OF COMMONS' RIGHT OF COMMITMENT

The power of commitment by the Commons was distinctly admitted by the Lords, at the conference between the two Houses, in the case of *Ashby v. White*, in 1704 (r), and it has been repeatedly recognized by the courts of law (s). The power is also virtually admitted by the statute, 1 Jas. 1, c. 13, s. 3, which provides that nothing therein shall "extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person."

#### NEED OF THE POWER OF COMMITMENT

In modern times the indispensability of the power of commitment to any body responsible to public opinion, whether its functions are legislative or judicial, has been amply demonstrated by experience (t). Being shared by the courts, it is not an exclusively parliamentary privilege.

"... Representative bodies must necessarily vindicate their authority by means of their own, and those means lie in the process of committal for contempt. This applies not to the Houses of Parliament only, but . . . as was observed in *Burdett v. Abbott* (14 East, 138) to the courts of justice, which, as well as the Houses, must be liable to continual obstruction and insult, if they were not entrusted with such powers. (Denman, C. J., in case of *Sheriff of Middlesex*, 3 St. Tr. (n.s.), 1253).

#### INQUIRY BY COURTS INTO CAUSES OF COMMITMENT

The Habeas Corpus Act (31 Car. 2, c. 2) is binding on all persons whatever, who have prisoners in their custody; and it is therefore competent for the judges to have before them persons committed by either House of Parliament for contempt; and it has, since 1704, been the practice for the Serjeant at Arms and others, by order of the House, to make returns to writs of habeas corpus (u).

In 1675 and 1704, the Commons endeavoured to resist the operation of a writ of habeas corpus by orders to the lieutenant of the Tower and to the Serjeant at Arms, to make no return thereto, C. J. (1667-87) 356; *ibid.* (1702-04) 565.

Although the return is thus made according to law, the general rule (with the exception mentioned on p. 94) is that the parties who stand

(q) Wynn "Treatise on the Jurisdiction of the House of Commons," p. 7.

(r) L. J. (1701-5), 714.

(s) The Aylesbury case, *Queen v. Paty* (1704), 2 Ld. Raym., 1105; *Murray's case* (1751), 1 Wils., 199; *Crosby's case* (1771), 3 *ibid.* 1888, 19 State Tr., 1137; *Burdett v. Abbott* (1811), 14 East 1; *Mr. Hobhouse's case* (1820), 2 Chit., 207, 3 B. & Ald., 420; *Sheriff of Middlesex* (1840), 11 Ad. & El., 273; *Howard's case*, Select Committee on Printed Papers, H. C. 305, 397 (1845); H. C. 39 (1847).

(t) For the exercise of the right of commitment by the House of Representatives, United States, though the right is not embodied in the constitution, see *House Manual and Digest* (House of Representatives, United States), s. 277, *et seq.*, 1 Story, 583.

(u) *Sheriff of Middlesex* (1840), C. J. (1840), 25; *Parl. Deb.* (1840), 51, c. 550; *Lines v. Russell* (1852), C. J. (1851), 147, 148, 153.

committed for contempt cannot be admitted to bail, or the causes of commitment be inquired into, by the courts of law (*a*). This opinion, expressed by resolutions of the House of Commons (*b*), has been confirmed by numerous subsequent decisions of the courts of law, given on applications for the release, or for the discharge on bail, of persons committed by the Houses of Lords and Commons (*c*).

In 1677, two years before the passing of the Habeas Corpus Act of 31 Charles 2, the Earl of Shaftesbury, who had been committed by the House of Lords "for a high contempt" was remanded by the Court of King's Bench on the ground that it had no jurisdiction. (1 Mod., 144).

In the view of the courts, either House of Parliament being a court of equal authority (some said a "superior" court) to the courts of Westminster Hall, its judgment to commit for contempt could not be inquired into any more than a similar judgment by another court of Westminster Hall. This view was well stated by De Grey, L.C.J., in *Brass Crosby's* case.

"When the House of Commons adjudge any thing to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is in execution; and no court can discharge or bail a person that is in execution by the judgment of another court. The House of Commons, therefore, having authority to commit, and that commitment being in execution . . . this court can do nothing . . . in such case this court is not a court of appeal" (19 St. Tr. 1147).

It is by virtue of this sanction that the attendance of witnesses before select committees of both Houses is, in the last resort, enforced (see p. 588).

## POWER OF BOTH HOUSES TO SECURE ATTENDANCE OF PERSONS ON MATTERS OF PRIVILEGE

The House of Commons has the power to send for persons whose conduct has been brought before the House on a matter of privilege by an order for their attendance, without specifying in the order the object or the causes whereon their attendance is required (*d*); and in obedience to the order Members attend in their places, and other persons at the Bar (*e*) (see pp. 133 and 140).

### POWER TO SEND FOR PERSONS IN CUSTODY

It has been a very ancient practice in both Houses to cause persons

(*a*) C. J. (1640-42), 960; *ibid.* (1646-48), 221; 5 State Tr., 365, 948; Sty., 415.

(*b*) In 1680, 4 Parl. Hist. 1262; C. J. (1667-87), 356, 357; *ibid.* (1697-99), 174; *ibid.* (1702-4), 565, 599.

(*c*) Lord Shaftesbury's case, 6 State Tr. 1269; 1 Freem., 153; 1 Mod. Rep., 144; 3 Keb., 792; *Queen v. Paty* (1704), 2 Ld. Raym., 1105; Mr. Murray's case (1751), 1 Wils., 200; *Brass Crosby's* case (1771), 19 State Tr., 1137, 3 Wils., 188; *Flower's* case (1799), 8 Term. Rep., 314; *Hobhouse's* case (1820), 2 Chit., 207, 3 B. & Ald., 420; *Sheriff of Middlesex* (1840), C. J. (1840), 25, 11 Ad. & El., 273; *Lines v. Russell* (1852), C. J. (1851), 147, 148, 153, *ibid.* (1852), 64, 68, 16 J. P., 491, 19 L. T. (o.s.), 364.

(*d*) See 2 Cav. Deb., 321 (21st Feb., 1771), for the Speaker's suggestion that service of the order of the House by leaving a copy thereof at the usual place of abode of the person therein named should be deemed personal service.

(*e*) C. J. (1892), 157; Parl. Deb. (1892), 3, c. 700; C. J. (1897), 361; *ibid.* (1901), 414.

to be brought in custody to the Bar to answer charges of contempt (*f*); and in the Lords to order them to be attached and brought before the House to answer complaints of breaches of privilege, contempts and other offences (*g*). This process is analogous to writs of attachment upon mesne process in the superior courts.

In *Gossett v. Howard*, on writ of error from the Court of Queen's Bench, the Court of Exchequer Chamber declared:—

“That the privileges of the House involved in the inquiry before the Court were indisputable, because, 1st, That House, which forms the Great Inquest of the nation (*h*), has a power to institute inquiries, and to order the attendance of witnesses, and in case of disobedience . . . bring them in custody to the Bar for the purpose of examination; and 2nd, If there be a charge of contempt and breach of privilege, and an order for the person charged to attend and answer it, and a wilful disobedience of that order, the House has undoubtedly the power to cause the person charged to be taken into custody, and to be brought to the Bar to answer the charge; and further, the House, and that alone, is the proper judge when these powers, or either of them, are to be exercised.” (10 Q. B., 451).

#### WARRANTS AS PROTECTION TO OFFICERS EXECUTING ORDERS OF HOUSE

Warrants for commitment issued by the Speaker by order of the House provide good returns to writs of habeas corpus, and justify the officers acting thereunder against actions for trespass, assault, or false imprisonment, unless the causes of commitment stated in the warrants appear to be beyond the jurisdiction of the House. It is not necessary that any cause of commitment should be stated in the warrant, or that the prisoner should have been adjudged guilty of contempt before being taken into custody (see p. 132). If the officer does not exceed his authority, he will be protected by the courts, even if the warrant should not be technically formal, according to the rules by which the warrants of inferior courts are tested.

#### FORMS OF WARRANTS

Warrants are sometimes expressed in general terms, as, for instance, that a prisoner is committed for a “high contempt” or a breach of privilege. Sometimes particular facts constituting the contempt are stated. Of the leading cases which have come before the courts the warrants were drawn generally in the following cases:—

*Lord Shaftesbury's case*, 1675 (6 St. Tr. 1269, 1 Freem. 153, 1 Mod. Rep. 144, 3 Keb. 792); *Murray's case*, 1751 (1 Wils. 200); *Sheriff of Middlesex* (1840) (C. J. (1840), 25, 11 Ad. & El., 273).

In the following cases the particular facts constituting the contempt were stated:—

(*f*) L. J. (1578-1614), 201 (1597); *ibid.*, 256 (1601); *ibid.*, 296; *ibid.* (1660-66), 252 &c.; C. J. (1547-1628), 175, 680, 886 (1623 & 1628); *ibid.* (1667-87), 351 (1675); *ibid.* (1727-32), 705 (1731); *ibid.* (1774-76), 323; *ibid.* (1825), 445; *ibid.* (1826-7), 561; *ibid.* (1840), 30, 56, 59; *ibid.* (1880), 70.

(*g*) See precedents collected in App. to 2nd Rep. Select Committee on Printed Papers, H. C. 397, p. 104 (1845).

(*h*) 4 Inst., 11.

*Regina v. Paty*, 1704 (2 Ld. Rayd. 1105); *Brass Crosby's case*, 1771 (19 St. Tr. 1137, 3 Wils. 188); *Burdett v. Abbott*, 1810 (14 East, 1); *Hobhouse's case*, 1820 (2 Chit., 207, 3 B. & Ald., 420).

The principles which the courts apply to the examination of warrants are briefly indicated by the following extracts from judgments in leading cases.

### 1. CAUSE OF COMMITMENT STATED GENERALLY

When the form of the warrant is general, it has been universally admitted that it is incompetent for the courts to inquire further into the nature of the contempt.

"If a commitment appeared to be for a contempt of the House of Commons generally, I would neither in the case of that court, or of any other of the superior courts, inquire further." (Lord Ellenborough in *Burdett v. Abbott*, 14 East, 150).

See also Lord Denman in the case of the *Sheriff of Middlesex*, 1840 (3 St. Tr. (n.s.) 1254) and Parke, C.B., in *Gossett v. Howard*, 1847 (10 Q. B. 453-4).

The principles applied in the above cases were those which had been expressed by other authorities in the following terms:—

"Nothing shall be intended to be out of the jurisdiction of a superior court but that which specially appears to be so." (1 Saund., 74).

"There can be no doubt but that the highest regard must be paid to all the proceedings of either of those Houses, and that, wherever the contrary does not plainly and expressly appear, it shall be presumed that they act within their jurisdiction, and agreeably to the usages of Parliament, and the rules of law and justice." (2 Hawkins P. C. (1824 Edition) b. 2, c. 15, s. 73).

### 2. PARTICULAR FACTS STATED

If the particular facts are stated in the warrant, divergent views have been held in the courts as to their duty of inquiry. In the earlier cases the judges disclaimed any power to inquire.

In *Regina v. Paty* 1704 (2 Ld. Raymd. 1105) the cause of commitment was stated as "commencing and prosecuting an action at common law against the late constables of Aylesbury, for not allowing his vote in the election of Members to serve in Parliament." Eleven of the judges were of opinion that the court had nothing to do with the consideration, whether or not it was a contempt of the House of Commons; the House having determined it to be so, they were bound to give credence to that determination: and the party was accordingly remanded. Lord Holt, however, was of opinion that the warrant did not state a legal cause of commitment; for that the prosecuting of the action being in itself a legal act, and the right of the subject, could not be a breach of privilege; and consequently that the party ought to be discharged.

See also Wright J. in *Murray's case*, 1751 (1 Wils. 299), and Blackstone J. in *Brass Crosby's case*, 1771 (3 Wils. 188; 19 St. Tr. 1138).

But the modern doctrine seems to be that expressed by Lord Ellenborough in *Burdett v. Abbott*, 1810 (which was an action for assault and not on a writ of habeas corpus).

"Upon this case I would observe, that I agree with Wright and Dennison, Justices (in *Murray's case*, see above) in thinking, that it need not appear what the contempt was; but I am not prepared to say with them, that we could in no case judge of it, or that there might not appear such a cause of commitment as, coming collaterally before the court in the way of a justification pleaded to an action of trespass, the court might not be obliged to consider and to pronounce to be defective: but it might be a more doubtful question whether, coming directly before us, as on a return to a habeas corpus, we could relieve the subject from the commitment of the House in any case whatever."

But he went on to say, "If a commitment . . . does not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the House committing, but a ground of commitment palpably and evidently arbitrary, unjust and contrary to every principle of positive law or natural justice; I say that, in the case of such commitment, we must look at it and act upon it as justice may require from whatever court it may profess to have proceeded." (14 East 147 *et seq.*).

This view received the support of Lord Denman in *Stockdale v. Hansard* (3 St. Tr. (n.s.) 856).

In the case of the Sheriff of Middlesex, 1840, after citing with approval Lord Ellenborough's opinion stated above, Lord Denman said:

"Bayley, J., as well as Lord Ellenborough appears in that case to have been of opinion that, if particular facts are stated in the warrant, and do not bear out the commitment, the Court should act upon the principle recognized by Holt, C. J., in *Regina v. Paty* [see above]: but that, if the warrant merely states a contempt in general terms, the Court is bound by it. That rule was adopted by this court in *Rex v. Hobhouse* (2 Chit. Rep. 207)." (11 Ad. & El., 273 *et seq.*).

#### IRREGULARITIES IN WARRANTS

Warrants issued by order of the House of Commons are not vitiated by irregularities of form.

Could J., in *Regina v. Paty* (2 Ld. Raym. 1106), "A commitment of the House of Commons . . . is not reversible for form."

Blackstone, J., in *Brass Crosby's case* (3 Wils. 205), "Little nice objections of particular words and forms and ceremonies of execution, are not to be regarded in the acts of the House of Commons: it is our duty to presume the orders of that House, and their execution, are according to law."

Lord Tenterden in *Rex v. Hobhouse* (2 Chit. Rep. 210), "We cannot inquire into the form of the commitment, even supposing it is open to objection on the ground of informality."

Such warrants are construed on the same principle as the writs of a superior court, not as the warrants of a magistrate.

In *Howard v. Gossett*, 1845 (10 Q. B. 359), the Speaker's warrant was strictly construed and held not to justify the action taken under it. This judgment was reversed by the Court of Exchequer Chamber, whose judgment was summed up as follows:—

" . . . The difference between the opinion of this Court and the majority of Queen's Bench is only this: that they construe the warrant as they would that of a magistrate, we construe it as a writ from a superior court. The

authorities relied upon by them relate to the warrants and commitments of magistrates; they do not apply to the writs and mandates of superior courts, still less to those of either branch of the High Court of Parliament." (10 Q. B. 459 (1847)).

A similar decision held as valid the warrant for committal issued by the chairman of a House of Commons Committee (on Elections), though the warrant was not made in the exact form prescribed by the statute (since repealed) under which it was issued, *Lines v. Russell*, 1852, 16 J. P. 491, 19 L. T. (o.s.) 364.

#### ARRESTS WITHOUT WARRANT

The Lords attach and commit persons by order, without any warrant (see p. 99). In earlier times it was not the custom to prepare a formal warrant for executing the orders of the House of Commons; but the Serjeant arrested persons with the mace, without any written authority (i); and at the present day he takes into custody strangers who intrude themselves into the House or otherwise misconduct themselves, in virtue of the general orders of the House, and without any specific instructions (j). The Speaker has also directed the Serjeant to take offenders into custody (see below).

#### PUNISHMENT BY COMMITTAL EXERCISED BY THE SPEAKER

When accompanied by the mace, the Speaker has ordered persons into custody for disrespect, or other breaches of privilege committed in his presence, without any previous order of the House.

Mr. Speaker Onslow ordered a man into custody who pressed upon him in Westminster Hall (2 Hatsell, 241 n.); and a case is mentioned by D'Ewes in which a Member seized upon an unruly page and brought him to the Speaker, by whom he was committed prisoner to the Serjeant (D'Ewes, 629). In 1675 Sir Edward Seymour, the Speaker, seized Mr. Serjeant Pemberton and delivered him into the custody of a messenger; but in that case Pemberton had already been in custody, and had escaped from the Serjeant at Arms (C. J. (1667-87) 351, 353).

Upon information that a man had assaulted a Member in the lobby the Speaker has directed the Serjeant to take the offender into custody (C. J. (1824) 483).

#### DIRECTIONS TO THE CIVIL POWER IN THE SPEAKER'S WARRANT

By the Speaker's warrant to the Serjeant at Arms, for taking a person into custody, "all mayors, sheriffs, under-sheriffs, bailiffs, constables, headboroughs, and officers of the House are required to be aiding and assisting in the execution thereof." (See also historical note below, p. 97).

#### AID AND POWERS CLAIMED FOR THE EXECUTION OF WARRANTS

Both Houses consider every branch of the civil government as bound to assist, when required, in executing their warrants and orders, and have

(i) Bainbrigge's case, 29th Feb., 1575, C. J. (1547-1628), 109; 1 Hatsell, 92; H. C., 397, p. vi. (1854).

(j) C. J. (1761-64), 23; *ibid.* (1819), 537; *ibid.* (1830), 461; *ibid.* (1830-31) 323; *ibid.* (1833), 246; *ibid.* (1847), 99.

repeatedly required such assistance. They also claim for their officers the power of breaking open the doors of a house when necessary in order to effect an arrest.

In 1640, all mayors, justices, etc., in England and Ireland were ordered by the Commons to aid in the apprehension of Sir G. Ratcliffe (*k*). In 1660, the Serjeant was expressly empowered "to break open a house in case of resistance, and to call to his assistance the sheriff of Middlesex, and all other officers, as he shall see cause; and who are required to assist him accordingly" (*l*). On the 23rd October, 1690, the Lords authorized Black Rod to break open the doors of any house, in the presence of a constable, and there search for and seize Lord Keverton (*m*).

On the 24th January, 1670, and again on 5th April, 1679, the House of Commons directed, by resolution, that the Speaker should issue warrants requiring sheriffs, bailiffs, constables and all other of his Majesty's officers and subjects, to aid and assist the Serjeant at Arms in his execution of the orders of the House (*n*). The Lords also have frequently required the assistance of the civil power in a similar manner (*o*).

In 1810, Sir F. Burdett was apprehended by the Serjeant and conveyed to the Tower with the assistance of a military force, acting under the direction of a civil magistrate (*p*).

#### POWER TO BREAK OPEN OUTER DOORS: RECOGNITION BY THE COURTS

In 1810, the actions which arose out of Burdett's case explained and recognized the legal consequences of a Speaker's warrant, and established the power of the Serjeant at Arms to use force for the purpose of overcoming resistance in the execution of the warrant (*q*).

*Howard's case*.—Although the Serjeant at Arms may force an entrance, it was established by the action brought by Mr. Howard, in 1842, that the Serjeant or his messengers are not authorized to remain in the house, if they know that the person to be arrested is from home, in order to await his return (*r*).

#### PROTECTION AFFORDED BY EITHER HOUSE TO OFFICERS EXECUTING THEIR ORDERS

Resistance to the Serjeant at Arms, or his officers, or others acting in execution of the orders of either House, has always been treated and punished as a contempt.

##### LORDS

The Lords will not suffer any persons, whether officers of the House or others, to be molested for executing their orders, or the orders of a committee (*s*), and will protect them from actions.

(*k*) C. J. (1640-42), 29.

(*l*) C. J. (1660-67), 222.

(*m*) L. J. (1685-91), 530.

(*n*) C. J. (1660-67), 586; *ibid.* (1667-87), 193; see also *ibid.* (1640-42), 371; *ibid.* (1667-87), 353, 587.

(*o*) 21st Dec., 1678, L. J. (1675-81), 429; 21st & 23rd Oct., 1690, *ibid.* (1628-42), 527, 530; 21st May, 1747, *ibid.* (1746-52), 118.

(*p*) C. J. (1810), 264; Annual Register, 1810, p. 344, etc.; Parl. Deb. (1810), 16, 257, 454, 915, etc.; Colchester, 11, 245, 263, etc.

(*q*) 14 East, 157; 4 Taunt, 401; 5 Dow, 165.

(*r*) Howard v. Gosset (1842), Car. & M., 382.

(*s*) L. J. (1675-81), 104, 412; *ibid.* (1691-96), 565; *ibid.* (1718-21), 190; *ibid.* (1787-90), 649; *ibid.* (1805-6), 340, 610.



*Hesse's case.*—The House being informed, 28th November, 1768, that an action had been commenced against Mr. Hesse, a justice of the peace for Westminster, who had acted under the orders of the House in suppressing a riot in the precincts, the plaintiff, and his attorney, were ordered to attend, and were imprisoned (*t*).

*Hyde's case.*—On the complaint of a constable, 26th June, 1788, that having, under an order of the House, refused Mr. Hyde admittance to Westminster Hall, he had been indicted for an assault, Mr. Hyde was ordered to attend, and committed (*u*).

*The "Umbrella case."*—On 26th March, 1827, John Bell was summoned before the Lords and admonished, because he had served a doorkeeper, when attending on the House, with a process from the Westminster Court of Requests, to pay a debt and costs awarded against him by that court, for the loss of an umbrella which was left with the doorkeeper during a debate (*a*).

## COMMONS

*Ferrers' case.*—In the case of Ferrers, in 1543, the Commons committed the sheriffs of London to the Tower, for having resisted their Serjeant at Arms, with his mace, while freeing a Member who had been imprisoned in the Compter (*b*).

*Topham's case.*—In 1689, after a dissolution of Parliament, an action was brought against Topham, the Serjeant at Arms attending the Commons, for executing the orders of the House in arresting certain persons. Topham pleaded to the jurisdiction of the court, but his plea was overruled, and judgment was given against him. The House declared this to be a breach of privilege, and committed the judges in the case, to the custody of the Serjeant at Arms (*c*).

## PRESENT PRACTICE IN COMMITTING OFFENDERS

Offenders committed by either House of Parliament are either detained in one of His Majesty's prisons (*d*), in the custody of Black Rod (*e*), or the Serjeant at Arms (*f*), as the case may be.

Where it is not expedient at that time to decide upon the ultimate place of punishment, whether it should or should not be prison, the proper course is to move that the offender be committed to the custody of the Serjeant at Arms, and it can consequently be determined whether it would be fit to send him to prison (Parl. Deb. (1819-20) 41, c. 1014).

In some instances, where the ultimate destination is intended to be one of his Majesty's prisons, the Commons have ordered the person adjudged

(*t*) L. J. (1767-70), 187, 197.

(*u*) L. J. (1787-90), 249, 250, 251.

(*a*) L. J. (1826-27), 199, 206.

(*b*) 1 Hatsell, 53, citing 3 Holmshed, 824-6 (see p. 91).

(*c*) C. J. (1688-93), 227.

(*d*) L. J. (1767-70), 189 (1768); *ibid.* 575 (1770); *ibid.* (1779-83), 191 (1780); *ibid.* (1783-7), 613 (1787); *ibid.* 647 (1787); *ibid.* (1787-90), 338 (1789); *ibid.* 649 (1790); *ibid.* (1794-6), 241; *ibid.* (1796-8), 509; *ibid.* (1798-1800), 182; *ibid.* (1801-2), 105; *ibid.* (1810-12), 371 & 372; *ibid.* (1850), 367 & 478; C. J. (1818), 289; *ibid.* (1826-7), 582; *ibid.* (1835), 501; *ibid.* (1843), 528; *ibid.* (1865), 336; *ibid.* (1878-9), 435; *ibid.* (1880), 77.

(*e*) L. J. (1828), 34; *ibid.* (1830-1), 471; *ibid.* (1831-2), 387; *ibid.* (1834), 743; *ibid.* (1845), 729; *ibid.* (1849), 135; *ibid.* (1870), 77.

(*f*) C. J. (1825), 455; *ibid.* (1835), 501; *ibid.* (1843), 523; *ibid.* (1851), 288-9; *ibid.* (1865), 336; *ibid.* (1878-9), 366; *ibid.* (1880), 235.

guilty of contempt to be taken into the custody of the Serjeant, and when that officer has informed the House that the offender has been taken into custody, have committed him to one of His Majesty's prisons (C. J. (1835) 501; *ibid.* (1843) 523). This course is followed in cases where it is not known whether the individual so ordered to be taken into the custody of the Serjeant can be found, for he must be found before the order can be executed. If, however, his address is known no such difficulty can arise (Parl. Deb. (1819-20) 41, cc. 1016-17). An order could then be made forthwith that the offender be committed to such and such a prison.

#### ORDERS AND WARRANTS FOR COMMITTAL TO PRISON

The *Lords* attach and commit persons by order, without any warrant. The order of the House is signed by the Clerk of the Parliaments, and is the authority under which the officers of the House and others execute their duty. In the *Commons*, when an offender is committed either to the custody of the Serjeant at Arms or to one of His Majesty's prisons, the Speaker is directed to issue his warrant or warrants accordingly.

Where a person who is in the custody of the Serjeant at Arms is committed by the House of Commons to one of his Majesty's prisons, two warrants are issued by the Speaker by order of the House, one to the Serjeant requiring the Serjeant to deliver the body of the prisoner into the custody of the keeper of the prison, another warrant reciting the judgment or order of the House and requiring the keeper of the prison to receive into his custody the body of the prisoner and safely keep him during the pleasure of the House or until the House make further order in his case. But where the offender is not in custody the order committing him to prison is followed up by a direction to issue his warrants, one of them to the Serjeant at Arms reciting the judgment or order of the House and directing him to take the offender into his custody and then forthwith deliver him over into the custody of the keeper of the prison determined upon, and the other to the keeper of such prison directing him to receive the offender and detain him. The warrants are entrusted to the Serjeant at Arms as the executive officer of the House and a refusal by the keeper of the prison to receive and detain on the delivery of one of them would be treated by the House as a gross contempt (Parl. Deb. (1819-20) 41, c. 1017).

#### PERIOD OF IMPRISONMENT

The *Lords* have power to commit offenders to prison for a specified term even beyond the duration of the session (*g*); but though the *Commons* formerly imprisoned offenders for a time certain (*h*) they have abandoned the practice, and they are now considered as without power to imprison for a period beyond the session (*i*). The modern practice of the Commons is not to commit offenders for any specified time, but generally or during pleasure; and to keep them in custody until they present petitions expressing proper contrition for their offences and

(*g*) L. J. (1767-70), 575; *ibid.* (1796-8), 509; *ibid.* (1798-1800), 182; *ibid.* (1801-2), 105; *ibid.* (1850), 478.

(*h*) C. J. (1547-1628), 269, 333, 639, 655; *ibid.* (1651-9), 531, 591; *ibid.* (1667-87), 543, 687, 737.

(*i*) *Per* Lord Denman, C. J., in *Stockdale v. Hansard* 1839, 9 Ad. & El., 114; H. C., 283, p. 142 (1839).

praying for their release (*j*), or until, upon motion made in the House, it is resolved that they shall be discharged (*k*). A similar course is frequently pursued by the Lords (*l*).

It was formerly the practice in both Houses before an offender was discharged to cause him to be brought to the bar where he received a reprimand from the Lord Chancellor (*m*), or the Speaker (*n*). But in the Commons the tendency in recent years has been to dispense with the offender's attendance at the bar (*o*).

Persons committed to the custody of the Gentleman Usher of the Black Rod or the Serjeant at Arms were formerly required to pay the fees of that officer as a condition of obtaining their discharge; but, in the Commons, according to present usage, no order for the payment of fees is made unless called for by the nature of the offence (C. J. (1857-58) 208; *ibid.* (1859) 342; *ibid.* (1878-79) 385).

If no time were mentioned, and the commitment were general, it has been said that prisoners committed by the *Lords* could not be discharged on habeas corpus, even after a prorogation (*p*); but in Lord Shaftesbury's case a doubt was expressed by one of the judges whether the imprisonment, which was for an uncertain time, would be concluded by the session; and another said that if the session had been determined the prisoner ought to have been discharged (*q*). The latter opinion derives confirmation from the fact that on 14th January, 1744, the Serjeant at Arms acquainted the House that he had kept a prisoner in his custody "until he was discharged of course by the prorogation of Parliament, without his having made his submission"; whereupon the offender was ordered to be re-attached (*r*).

Persons committed by the *Commons*, if not sooner discharged by the House, are immediately released from their confinement on a prorogation, whether they have paid the fees or not. If they were held longer in

(*j*) It has been customary to order such petitions to be printed and considered on a future day (C. J. (1842), 180, 209; *ibid.* (1851), 151; *ibid.* (1857-58), 196; Parl. Deb. (1857-58), 150, c. 1198; C. J. (1878-79), 381). In one instance where a petition was presented from a person in the custody of the Serjeant expressing contrition for his offence and praying to be discharged from custody, the House ordered him to be brought to the bar forthwith in order to his being reprimanded and discharged (C. J. (1825), 469, 470).

(*k*) C. J. (1840), 291, 337; *ibid.* (1842), 224; *ibid.* (1880), 241.

(*l*) L. J. (1767-70), 189; *ibid.* (1779-83), 191; *ibid.* (1783-7), 613, 647 (1787); *ibid.* (1787-93), 250 (1788), 338 (1789), 649 (1790); *ibid.* (1794-6), 241; *ibid.* (1801-2), 115, 221, 225, 230; *ibid.* (1828) 34; *ibid.* (1830-1), 471; *ibid.* (1831-2), 387; *ibid.* (1834), 745; *ibid.* (1845), 730; *ibid.* (1849), 135; *ibid.* (1850), 367, 380, 384; *ibid.* (1870), 77.

(*m*) L. J. (1767-70), 196, 197; *ibid.* (1783-7), 650; *ibid.* (1787-90), 251; *ibid.* (1801-2), 225, 230; *ibid.* (1828), 36, 38; *ibid.* (1830-1), 494, 507, 508; *ibid.* (1831-2), 390; *ibid.* (1834), 764, 769; *ibid.* (1845), 736, 737; *ibid.* (1849), 138, 139, 143; *ibid.* (1850), 380, 384; *ibid.* (1870), 77.

(*n*) C. J. (1826-27), 399; *ibid.* (1831-32), 365; *ibid.* (1835), 547; *ibid.* (1842), 420; *ibid.* (1851), 289.

(*o*) C. J. (1819-20), 467; *ibid.* (1830-31), 333; *ibid.* (1835), 532; *ibid.* (1840), 337; *ibid.* (1846), 768; *ibid.* (1847-48), 263; *ibid.* (1857), 263; *ibid.* (1857-58), 203; Parl. Deb. (1857-58), 150, cc. 1313, 1404; C. J. (1878-79), 385; *ibid.* (1880), 241.

(*p*) *Per* Lord Denman, C. J. in *Stockdale v. Hansard*, 9 Ad. & El., 127; H. C. 283, p. 147 (1839).

(*q*) 6 State Tr., 1296; 1 Mod. Rep., 144.

(*r*) L. J. (1741-46), 420.

custody, they would be discharged by the courts upon a writ of habeas corpus (s).

Where, however, the House considers that an offender who has thus regained his liberty has not been sufficiently punished, he may be again committed in the next session and detained until the House is satisfied (t).

Thus in 1751 one Murray, who had been imprisoned in Newgate until the close of the session for contempt, was, on the next meeting of Parliament, again ordered to be committed (C. J. (1750-54) 303). See also *Grissell's case* (C. J. (1880) 70, 73, 77).

## MODES OF PUNISHMENT OTHER THAN COMMITTAL

### I. FINES

**Lords.**—The House of Lords in its capacity as a court of record has power to inflict fines, either in substitution for, or in addition to, committal. Instances too numerous to mention of the exercise of the power are recorded in the Journals (u). Cases are also recorded in which they have ordered security to be given for good conduct, even during the whole life of the parties (x).

**Commons.**—As stated above (p. 89), the Commons, prior to 1666, exercised the power of imposing fines.

*Floyde's case*, 1621. Floyde had spoken offensive words concerning the daughter of James I and her husband, the Elector Palatine. In this there was no breach of parliamentary privilege. Yet the Commons took cognizance of the offence, and sentenced Floyde to pay a fine of £1,000, and to stand twice in the pillory and to ride backwards on a horse, with the horse's tail in his hand (a). Upon this judgment being given, first the king and then the Lords interfered, because the offence was beyond the jurisdiction of the Commons. The Commons perceived their error, and left the offender to be dealt with by the Lords. If the Commons exceeded their jurisdiction in this case, the Lords equally disregarded the limits of their own, and proceeded to still more exemplary punishments. This notorious case, which has been explained as due to a "mean submissiveness" to the royal power (b), was more probably the result of religious intolerance, the Elector Palatine being a champion of Protestantism, and Floyde a Catholic.

*White's case.*—The last case of a fine by the Commons occurred in 1666, when a fine of £1,000 was imposed upon Thomas White, who had absconded after he had been ordered into the custody of the Serjeant at Arms (c).

(s) *Per* Lord Denman, C. J., in *Stockdale v. Hansard* (1839), 9 Ad. & El., 114; H. C. 283, p. 142 (1839). This law never extended to an adjournment, even when it was in the nature of prorogation; see C. J. (1688-93), 537.

(t) Parl. Deb. (1879), 249, c. 989.

(u) L. J. (1620-28), 276; *ibid.* (1660-66), 554; *ibid.* (1666-75), 174; *ibid.* (1685-91), 144; *ibid.* (1760-64), 493 (Report of Precedents); *ibid.* (1767-70), 575; *ibid.* (1796-98), 509; *ibid.* (1798-1800), 181; *ibid.* (1801-2), 60, 105.

(x) L. J. (1660-66), 554; *ibid.* (1790-93), 331.

(a) C. J. (1547-1628), 609; 1 Parl. Hist. 1250.

(b) Lord Denman, 3 St. Tr. (n.s.), 852.

(c) C. J. (1660-67), 690.

The possession by the Commons of the power of imposing fines was denied by Lord Mansfield (*d*).

## 2. REPRIMAND AND ADMONITION

Where the offence is not so grave as to warrant the committal of the offender he is generally directed to be reprimanded (*e*) or admonished (*f*) by the Lord Chancellor or the Speaker.

In 1810 the Speaker said that "the House, having voted that the person at the Bar had been guilty of a high breach of its privileges, could not pass over the offence without some degree of imprisonment" (Parl. Deb. (1810) 15, c. 497).

The *Lords* have sometimes ordered offenders to be taken into the custody of the Gentleman Usher of the Black Rod and then to be called in and reprimanded by the Lord Chancellor and then to be discharged upon payment of their fees (L. J. (1805-6) 610, (1806), or to be continued in custody until they have entered into recognizances for good behaviour (L. J. (1805-6) 340 (1805).

In one instance, the Lords ordered that an offender should be discharged without any punishment but should be acquainted that if he repeated his offence he would not meet with such leniency (L. J. (1767-70) 212).

In the *Commons*, when a person who is not a Member is directed to be reprimanded or admonished, the offender, if he is in attendance, is brought to the bar of the House forthwith by the Serjeant at Arms, and is there reprimanded by the Speaker in the name and by the authority of the House. The offender is then discharged. If, however, he is not in attendance, he may be ordered either to be taken into the custody of the Serjeant and brought to the bar the following or some later day, there to be reprimanded and discharged (*g*), or to attend the House on a future day to be reprimanded (*h*).

If the offender is a Member he receives the reprimand or admonition standing in his place (*i*), unless he is in the custody of the Serjeant, in which event he is reprimanded at the bar. When a Member is ordered to be reprimanded or to be admonished he may be called in to receive the reprimand or admonition forthwith (*j*), or he may be ordered to attend the House in his place the following or some later day (*k*).

What is said by Mr. Speaker in reprimanding or admonishing offenders is always ordered to be entered in the Journals.

When an offender is brought to the bar to receive judgment of commitment, or any other punishment, or to be discharged out of custody (see p. 100), the Serjeant at Arms stands by him with the mace (*l*).

(*d*) In *R. v. Pitt* and *R. v. Mead*, 3 Burr., 1335.

(*e*) L. J. (1767-70), 187; *ibid.* (1798-1800), 646; *ibid.* (1801-2), 60; *ibid.* (1810-12), 341, 399; *ibid.* (1830-31), 335; *ibid.* (1850), 89; C. J. (1826-8), 399; *ibid.* (1837-38), 316; *ibid.* (1839), 278; *ibid.* (1840), 23; *ibid.* (1887), 306; *ibid.* (1901), 418.

(*f*) L. J. (1826-27), 206; C. J. (1831-32), 294; *ibid.* (1833), 218; *ibid.* (1842), 143; *ibid.* (1874), 189; *ibid.* (1892), 166; *ibid.* (1929-30), 503.

(*g*) C. J. (1819), 618.

(*h*) C. J. (1887), 306.

(*i*) C. J. (1790), 516; *ibid.* (1837-38), 316; *ibid.* (1892), 167; *ibid.* (1929-30), 503.

(*j*) C. J. (1892), 167.

(*k*) C. J. (1790), 516; *ibid.* (1837-38), 312.

(*l*) 2 Hatsell, 144.

**Prisoners no longer kneel at bar.**—It was formerly the practice to make prisoners receive the judgment of the House kneeling at the bar; in both Houses, however, this practice has long since been discontinued (*m*).

*Murray's case.*—This practice was insisted on by the House as late as 1750, when Murray was committed to prison for refusal to kneel, when brought up to the bar of the House of Commons, his refusal being declared "a most dangerous contempt of . . . privilege (*n*)."<sup>1</sup> It appears that there had previously been only one other instance of such a refusal to kneel (*o*).

### 3. PROSECUTION OF OFFENDERS

In cases of breach of privilege which are also offences at law, where the punishment which the House has power to inflict would not be adequate to the offence, or where, for any other cause the House has thought a proceeding at law necessary, either as a substitute for, or in addition to, its own proceeding, the Attorney-General has been directed to prosecute the offender (*p*).

In 1889 the House, on the recommendation of a committee which had been appointed to consider a special report from a committee stating that in their opinion there were strong grounds for believing that one Richard Martin, in giving his evidence before the committee, had been a party with others in a conspiracy to deceive the committee, ordered "that the shorthand notes of the evidence given by Mr. Richard Martin before the Friendly Societies Committee with respect to the Yorkshire Provident Insurance Company, and the books and papers produced by him, and also a letter addressed to Sir Herbert Maxwell by Mr. Richard Martin and certain books forwarded by Mr. Richard Martin to the clerk to the committee, be placed in the hands of the Director of Public Prosecutions in order that criminal proceedings may be instituted against the persons responsible for the management of the Yorkshire Provident Insurance Company" (C. J. (1889) 363).

### PUNISHMENTS INFLICTED ON MEMBERS

In the case of contempts committed against the House of Commons by Members two other penalties are available, viz., suspension from the service of the House (*q*) and expulsion (*r*). In some cases expulsion has been inflicted in addition to committal (*s*).

In the Lords, a sentence of expulsion against one of its Members, passed by that House as a court, would rank as a disqualification (see p. 193).

#### SUSPENSION BY THE COMMONS

Suspension from the service of the House was a punishment employed by the House of Commons under its power of enforcing discipline among

(*m*) Resolution 16th March, 1772, C. J. (1770-72), 594.

(*n*) 14 Parl. Hist. 894 *et seq.*; 1 Walpole's Memoirs of George II, 15.

(*o*) Report of Precedents, C. J. (1750-54), 48. There had, however, been similar cases before the Lords, 3 Parl. Hist. 844, 880.

(*p*) C. J. (1693-97), 734; *ibid.* (1697-99), 288; *ibid.* (1699-1702), 230-31, 735; *ibid.* (1741-45), 394; *ibid.* (1750-54), 304; *ibid.* (1778-80), 902; *ibid.* (1841), 394, 413; *ibid.* (1854), 159; *ibid.* (1857), 355; *ibid.* (1860), 258; *ibid.* (1866), 239.

(*q*) C. J. (1888), 385; *ibid.* (1890-91), 481; *ibid.* (1911), 37.

(*r*) C. J. (1882), 62.

(*s*) C. J. (1547-1628), 917; *ibid.* (1640-42), 158, 703; *ibid.* (1642-44), 526; *ibid.* (1646-48), 295; *ibid.* (1648-51), 591; *ibid.* (1667-87), 576, 642.

its Members, long before it was prescribed by standing order for particular offences, such as disregard of the authority of the Chair, or obstruction, and it can still be imposed at the discretion of the House, although, of course, not under the summary procedure authorized by that standing order (see p. 444).

In 1641, Mr. Gervaise Hollis was suspended the House during the session (*i*).

In 1643, Sir Norton Knatchbull was suspended the House during the pleasure of the House (*u*).

For nearly two centuries this form of punishment had been in abeyance, no case of suspension having occurred since 1692. But at the discretion of the House on the 25th July, 1877, as a result of persistent obstruction by the Parnellite group, Mr. Speaker Brand gave the following ruling:—

“The House is perfectly well aware that any Member persistently and wilfully obstructing public business without just and reasonable cause is guilty of a contempt of this House, and is liable to punishment whether by censure, suspension from the service of the House, or commitment, according to the judgment of the House.” (Parl. Deb. (1877) 235, c. 1814).

In February, 1880, the procedure for suspending a Member for particular offences was laid down by Standing Order No. 17 (see p. 444), and suspensions under this Standing Order are not infrequent.

#### EXPULSION BY THE COMMONS

The purpose of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution. But it is more convenient to treat it among the methods of punishment at the disposal of the House. At the present time expulsion is practically reserved for the punishment of persons convicted of grave misdemeanours, whose seats are not, as in the case of Members convicted of treason or felony, automatically vacated.

Members have been expelled as being in open rebellion (*a*); as having been guilty of forgery (*b*); of perjury (*c*); of frauds and breaches of trust (*d*); of misappropriation of public money (*e*); of conspiracy to defraud (*f*); of fraudulent conversion of property (*g*); of corruption in the administration of justice (*h*), or in public offices (*i*), or in the execution

(*i*) C. J. (1640-42), 128.

(*u*) C. J. (1642-44), 302; also the cases of Mr. Frye, *ibid.* (1648-51), 123; Mr. Love, *ibid.* (1660-67), 289; Sir G. Carteret, *ibid.* (1667-87), 120; Sir J. Prettman, *ibid.*, 156; Mr. Cullingford, *ibid.* (1688-93), 846.

(*a*) Mr. Foster and Mr. Carnegie, 1715, C. J. (1714-18), 336, 467.

(*b*) Mr. Ward, 1726, C. J. (1722-27), 702.

(*c*) Mr. Atkinson, 1783, C. J. (1782-84), 770.

(*d*) South Sea Directors 1720, C. J. (1718-21), 406, 412, 413; Commissioners of Forfeited Estates, 1732, *ibid.* (1727-32), 871; Benjamin Walsh, 1812, *ibid.* (1812), 176; Mr. Hastings, 1892, C. J. (1892) 120; and see Colchester, ii, 373.

(*e*) Earl of Ranelagh, 1702, C. J. (1702-04), 171; Mr. Hunt, 1810, *ibid.* (1810), 398.

(*f*) Lord Cochrane and Mr. Cochrane Johnstone, 1814, C. J. (1813-14), 433.

(*g*) Mr. Bottomley, C. J. (1922), 273, 276, 293, 319.

(*h*) Sir J. Bennet, 1621, C. J. (1547-1628), 588.

(*i*) Mr. Walpole and Mr. Cardonell, 1711, C. J. (1711-14), 30, 97.

of their duties as Members of the House (*j*); of conduct unbecoming the character of an officer and a gentleman (*k*); and of contempts, libels and other offences committed against the House itself (*l*).

**Evidence of offences.**—Where Members have been legally convicted of offences which warrant expulsion, it is customary to lay the record of conviction before the House (*m*). In other cases the proceedings have been founded upon reports of commissions or committees of the House or other sufficient evidence (*n*). It is customary to order the Member, if absent, to attend in his place before an order is made for his expulsion (*o*). Service is made upon him of the order of the House for his attendance; or evidence is furnished proving that service is impossible.

Lord Cochran, imprisoned in the King's Bench for conspiracy to defraud (see p. 78), was brought to the bar by the marshal of the prison in deference to the order of the House. Lord Cochrane was desired by the Speaker to take his place, whence he addressed the House in support of his innocence.

In the case of Mr. Verney, who had pleaded guilty, and of Mr. Hastings, who had been convicted on his own confession, and who were lying in prison under sentence for their offences, an order for attendance was not made, but a communication was sent through the Home Office of the intended motion for their expulsion (*p*).

Mr. Bottomley, imprisoned for fraudulent conversion of property, did not attend the House, but wrote a letter to the Speaker which was communicated by him to the House on the order of the day for Mr. Bottomley's attendance being read (*q*).

Members have also been expelled who have fled from justice, without any conviction or judgment of outlawry.

On the 18th July, 1856, a true bill was found against James Sadleir for fraud,\* and a warrant was then issued for his apprehension. On the 24th a motion was made for his expulsion, on the ground of his having absconded, which, being considered premature, the House refused to entertain. But on the 16th February, 1857, when the reports of the Crown solicitor and officers of the constabulary, showing the measures which had been ineffectually taken to apprehend Mr. Sadleir and bring him to trial, had been laid before the House, he was expelled as having fled from justice (*r*).

**No disability created by expulsion.**—Expulsion, though it vacates the seat of a Member, and a new writ is immediately issued, does not create any disability to serve again in Parliament, if he is re-elected.

(*j*) Mr. Asburnham, 1667, C. J. (1667-87), 24; Sir J. Trevor (Speaker), 1694, *ibid.* (1693-97), 274, 5 Parl. Hist. 900-910; Mr. Hungerford, 1695, C. J. (1693-97), 283.

(*k*) Col. Cawthorne, 1796, C. J. (1795-96), 661; Mr. Verney, 1891, *ibid.* (1890-91), 268, 272, 282.

(*l*) C. J. (1547-1628), 917; *ibid.* (1640-42), 301, 537; *ibid.* (1667-87), 431; *ibid.* (1711-14), 513; *ibid.* (1714-18), 411; *ibid.* (1722-27), 391; *ibid.* (1882), 61. See also Report of Precedents, H. C. 79 (1806-7).

(*m*) C. J. (1782-84), 770; *ibid.* (1812), 176; *ibid.* (1813-14), 433, etc.

(*n*) C. J. (1693-97), 283; *ibid.* (1722-27), 141, 391; *ibid.* (1727-32), 870; *ibid.* (1810), 433, etc.

(*o*) C. J. (1795-96), 661; *ibid.* (1810), 399; *ibid.* (1812), 176; *ibid.* (1813-14), 433; *ibid.* (1856), 367.

(*p*) See Mr. Speaker's remarks (Mr. Verney's case), 121 May, 1891, Parl. Deb. (1891), 353 c. 574.

(*q*) C. J. (1922), 319.

(*r*) C. J. (1856), 379, Parl. Deb. (1856) 143, c. 1386; C. J. (1857), 48, Parl. Deb. (1857), 144, c. 702. See also C. J. (1890-1), 456, 469; *ibid.* (1892), 67.



John Wilkes was expelled in 1764 for being the author of a seditious libel. In the next Parliament (3rd February, 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th February, "that, having been in this session of Parliament expelled this House, he was and is incapable of being elected a Member to serve in this present Parliament" (s). The election was declared void; but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued. A new expedient was now tried; Mr. Luttrell, then a Member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election, and being defeated, petitioned the House against the return of his opponent. The House resolved that, although a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the House declared that Mr. Luttrell was duly elected. These proceedings were proved by unanswerable arguments to be illegal (t); and on the 3rd May, 1782, the resolution of the 17th February, 1769, was ordered to be expunged from the Journals, as "subversive of the rights of the whole body of electors of this kingdom" (u).

In 1882, Mr. Bradlaugh, having been expelled, was immediately returned by the electors of Northampton; and no question was raised as to the validity of his return (a).

**Former creation of disabilities by the Commons.**—Although one House of Parliament has no power to create a disability unknown to the law, in former times the Commons occasionally assumed the right to add to expulsion disability of sitting in Parliament or even of serving the State.

On 27th May, 1641, Mr. Taylor, a Member, was expelled and adjudged to be forever incapable of being a member of the House (b).

During the Long Parliament, incapacity for serving in the Parliament then assembled was frequently part of the sentence of expulsion.

On the Restoration, in 1660, the House expelled Mr. Wallop, and resolved him to be "made incapable of bearing any office or place of public trust in this kingdom" (c).

In 1712, Mr. Robert Walpole, on being re-elected after his expulsion, was declared incapable of serving in the present Parliament, having been expelled for an offence (d).

#### EXPULSION FROM THE LORDS BY SENTENCE OF THE HOUSE

The House of Lords, sitting as a court of justice upon one of its own Members, either on impeachment or when he is on trial by his peers, can, by its sentence, disqualify a Lord of Parliament from sitting in the

(s) C. J. (1768-70), 229.

(t) See particularly the speech of Mr. Wedderburn, 1 Cav. Deb., 352. See also May, Const. Hist. i, 310-326.

(u) C. J. (1780-82), 977.

(a) C. J. (1882), 62.

(b) C. J. (1640-42), 158; also Mr. Benson, *ibid.* 301; and Mr. Trelawny, *ibid.* 473.

(c) C. J. (1660-67), 60.

(d) C. J. (1711-14) 128.

House of Lords. "This sentence, passed by resolution of the House, is an actual disqualification, and not, as in the case of the expulsion of a Member by the House of Commons, a punishment which may or may not be temporary, as the person expelled does or does not obtain re-election" (e).

The sentence upon Lord St. Albans, Lord Chancellor, after he had been convicted by the House of Lords in 1621, upon impeachment by the Commons included the provision that he should be incapable of sitting in Parliament (f).

In 1624 Lord Middlesex, Lord High Treasurer of England, who was impeached by the Commons for bribery and other misdemeanours, was unanimously convicted by the Lords and sentenced to perpetual exclusion from Parliament (g).

Disqualification by sentence of the House of Lords is removable by a pardon from the Crown (h).

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(e) 1 Anson, 228.

(f) L. J. (1620-28), 105-6.

(g) 1 Anson, 228.

(h) 1 Anson, 229; Pike, 275.

## CHAPTER VIII.

### BREACHES OF PRIVILEGE AND CONTEMPTS

The matters dealt with in this Chapter are :—

- A. Acts or conduct constituting breach of privilege or contempt.
- B. Proceedings in case of breach of privilege or contempt.

#### A. ACTS OR CONDUCT CONSTITUTING BREACH OF PRIVILEGE OR CONTEMPT

##### CONTEMPT IN GENERAL

It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary. Certain principles may, however, be collected from the journals which will serve as general declarations of the law of Parliament. It may be added that any other act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence (*a*).

#### MISCONDUCT IN THE PRESENCE OF EITHER HOUSE OR COMMITTEES OF EITHER HOUSE

Any disorderly, contumacious or disrespectful conduct in the presence of either House or any committee thereof, whether by strangers present or by persons attending as parties or witnesses, will constitute a contempt. For this purpose a Member present at a committee, who is not of the committee, must be considered as standing, in most respects, on the same footing as a stranger.

##### MISCONDUCT OF STRANGERS

The following are instances of disorderly conduct on the part of strangers which has been punished as contempt :

Interrupting or disturbing the proceedings of either House (*Clifford's Case*, C. J. (1830) 461 ; *Jacob's Case*, C. J. (1830-31) 323, 325 ; *Carlisle's Case*, L. J. (1920) 405 ; H. L. Deb. (1920) 41, cc. 1026, 1237), or of committees thereof (*Case of Shelton and Royston*, C. J. (1640-42) 668 ; *Sutcliffe's Case*, *ibid.* (1640-42) 815 ; *Ashworth's Case*, *ibid.* (1842) 131, 143 ; Parl. Deb. (1842) 61, c. 1003).

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(*a*) See Report of the Select Committee on the Official Secrets Acts, H. C. 101, p. xii, (1938-39).

Remaining in the House after strangers have been directed to withdraw (L. J. (1714-18) 351, 516, 617; *ibid.* (1718-21) 29).

Taking notes of what is passing in the House and refusing to desist when requested to do so by an officer of the House (*Finnerby's Case*, C. J. (1819) 537; Parl. Deb. (1819) 40, c. 1182).

#### MISCONDUCT OF COUNSEL

Counsel appearing before the House have been punished for reflecting in the course of their argument upon the preceding Parliament (*Martyn's Case*, C. J. (1548-1628) 488, 489) or upon members of the House (*Howard's Case* (1668), 1 Grey Deb. 145).

#### MISBEHAVIOUR ON THE PART OF WITNESSES

The following are examples of contempt by witnesses :

Refusing to be sworn or to take upon himself some corresponding obligation to speak the truth (*Sir John Blunt's Case* (1720), L. J. (1718-21) 418, 420; and *Bower's Case*, C. J. (1852-53) 320; 2 P. R. & D. 51; *Howard's Case* (1870), L. J. (1870) 77).

Refusing to answer questions (*Carey's Case* (1676), L. J. (1675-81) 54, 55; *Crosfeild's Case* (1695), L. J. (1691-96) 677; *Sir John Blunt's Case* (1720), L. J. (1718-21) 418, 420; *Sheehan's Case*, C. J. (1831-32) 360, 365; *Prentice's Case*, C. J. (1835) 501, 504; *Wren's Case*, C. J. (1842) 223, 224; *Fleming's Case*, C. J. (1842) 227; refusing to produce documents in their possession (*Malby's Case*, C. J. (1788-89) 173; *Fairman's Case*, C. J. (1835) 564, 571, 575).

Prevaricating (*Aylett's Case* (1768), L. J. (1767-70) 188, 189; *Case of Farren and Hickes* (1811) L. J. (1810-11) 371; *Carne's Case*, C. J. (1827) 473; *Weaver's Case*, C. J. (1831-32) 335; *McLean's Case*, C. J. (1835) 601; *Dodgson's Case*, C. J. (1848) 258; *Lines's Case*, C. J. (1851) 147; *Towler's Case*, C. J. (1852-53) 699, 742; *Woolfen's Case*, C. J. (1857) 354; and *Colburn's Case*, C. J. (1866) 239); giving false evidence (*Drake's Case*, C. J. (1806-07) 256; *Carne's Case*, C. J. (1827) 473; *Leadbetter's Case*, C. J. (1828) 147; *Gibbons's Case*, C. J. (1842) 168; *Lucas's Case*, C. J. (1842) 198; and *Thurston's Case*, C. J. (1842) 206), or wilfully suppressing the truth (*Fox's Case*, C. J. (1828) 122; Parl. Deb. (1828) 18, c. 936).

Trifling with a committee (*Jones's Case*, C. J. (1688-93) 294); using saucy language to, and deriding (*Rosse's Case*, C. J. (1660-67) 296); returning insulting answers to a committee (*Fountain's Case*, C. J. (1640-42) 803); or appearing in a state of intoxication (*Crone's Case*, C. J. (1852-53) 389).

Destroying, after his first examination before a committee, a material document relative to their inquiry (*Lambe's Case*, C. J. (1819) 618, 621).

#### ATTEMPTED INTIMIDATION OF EITHER HOUSE

It is a breach of privilege for any number of persons to come in a riotous, tumultuous or disorderly manner to either House in order either to hinder or promote the passing of any bill or other matter depending before such House, or to incite other persons to do so.

Resolutions to this effect were passed by the Commons on 12 April 1733 (C. J. (1732-37)), and by the Lords on 17 May 1765 (L. J. (1765-67) 209). Previously, on 26 January 1696 and 27 February 1699, the Commons had resolved that the inciting and encouraging any number of persons to come in a riotous, tumultuous or disorderly manner to this House in order either to hinder or promote the passing of any bill or other matters pending before this House, being against the constitution and freedom of parliament, is a high crime and misdemeanour (C. J. (1693-97) 667; C. J. (1699-1702) 230); and persons had been committed for inciting others to come in a riotous manner to the House (*Dennis's Case*, C. J. (1699-1702) 230) or for inciting the rabble against the members of the House (*Gardner's Case*, C. J. (1699-1702) 231).

On 6 June 1780 the Commons resolved, "that the taking possession of the lobby and the avenues to this House, on Friday last, by a large and tumultuous assembly of people, and maintaining the same, to the great obstruction of the business of this House, though frequently desired by the Serjeant at Arms attending this House, and by several Members, to withdraw, was a high violation of the privilege of this House, tended to control the freedom of debate, and was a gross and notorious insult on the dignity and constitution of Parliament" (C. J. (1778-80) 902).

## DISOBEDIENCE TO RULES OR ORDERS OF EITHER HOUSE

Disobedience to the orders of either House, whether such orders are of general application or require a particular individual to do or abstain from doing a particular act, or contravention of any rules of either House is a contempt of that House.

### DISOBEDIENCE TO GENERAL RULES OR ORDERS OF EITHER HOUSE

As an example of a general rule the violation of which would be regarded as a breach of privilege, it may be sufficient to mention the resolution of the Commons of 14 November 1689, "that all petitions presented to the House ought to be signed by the petitioners, with their own hands, by their names or marks" (C. J. (1689-93) 285). The House of Commons, on 2 June 1774, resolved that it was "highly unwarrantable and a breach of the privilege of this House for any person to set the name of any other person to any petition to be presented to this House" (C. J. (1772-74) 800).

Contravention of the orders which forbid the publication of proceedings and debates of either House or committees of either House is dealt with elsewhere (see pp. 53-54).

### DISOBEDIENCE TO PARTICULAR ORDERS OF EITHER HOUSE

The refusal or neglect of a witness or other person, summoned to attend either House or a committee of either House, to attend affords the most common example of this type of contempt:

(*Waller's Case* (1720), L. J. (1718-21) 429; *Phelan's Case* (1733), L. J. (1731-36) 388; *Houll's Case* (1738), L. J. (1736-41) 250; *Whitehead's Case* (1738), L. J. (1736-41) 290; *Edmunds's Case* (1770), L. J. (1767-70) 429, 575; *Parker's Case* (1779), L. J. (1776-79) 692; *Young's Case*, C. J. (1722-27) 92; *Satchwell's and Poulter's Cases*, C. J. (1727-33) 705; *Leverland's Case*, C. J. (1745-50) 308;

*Wheble's and Thompson's Cases*, C. J. (1770-72) 208; *Miller's Case*, *ibid.* 259; *Horne's Case*, C. J. (1772-74) 465; 17 Parl. Hist. 1021; *Grissell's Case*, C. J. (1878-9) 366).

Other examples of this kind of contempt are :

Neglecting to make a return (*Chadwick's and Marriner's Case* (1849), L. J. (1849) 135).

Neglecting or refusing to withdraw from the House when directed to do so (L. J. (1714-18) 331, 516, 617; *ibid.* (1718-21) 29; *Bradlaugh's Case*, C. J. (1880) 235; Parl. Deb. (1880) 253, c. 620).

Civil officers refusing to release from custody Members and other persons entitled to the privilege of the House when required to do so (*case of the Sheriff of London* (1543), 1 Holinshed, 824; 1 Hatsell, 57; *case of the Warden of the Fleet*, C. J. (1547-1628, 155 *et seq.*; *case of the Sheriff of London* (1660), L. J. 1660-66) 222).

Sheriffs refusing to refund to the printers to the House of Commons a sum of money levied by the sale of their property (*Evans's and Wheelton's Case*, C. J. (1840) 16, 19).

### DISOBEDIENCE TO ORDERS OF COMMITTEES

Disobedience to the orders of a committee is a contempt of the House by which the committee was appointed, provided the order made is within the scope of the committee's authority.

The following is an instance of this type of contempt by disobedience to the orders of committees :

Disobedience to orders for the attendance of persons made by committees duly authorized in that behalf (*Lowman's Case*, C. J. (1688-93) 162; *Overbury's Case*, *ibid.* 180; *cases of Lee and Harris*, C. J. (1702-4) 551; *Hodgson's Case*, C. J. (1718-21) 967; *cases of Gaylard and Wilkinson*, *ibid.* 582, 583; *cases of Molloy, Forster and Gordon*, *ibid.* 590; *Billingsley's Case*, C. J. (1722-27) 91; *Young's Case*, *ibid.* 92; *case of Lewin and Gardiner*, C. J. (1780-82) 967; *Siret's Case*, C. J. (1790-91) 352; *Weal's Case*, C. J. (1803-4) 215; 2 Peck, 136).

Disobedience to orders for the production before committees of papers or other documents (see p. 588).

Delivering to another person a book of copies of letters some of which related to the affairs of a certain company after receiving an order to lay before a committee all books and writings in his custody relating to that company (*Strachey's Case*, C. J. (1732-37) 51).

Refusing to permit books or papers to be inspected when required by orders of committees (*Chambers' Case*, C. J. (1714-18) 46).

### OBSTRUCTING THE EXECUTION OF ORDERS OF EITHER HOUSE

To prevent, delay, obstruct or interfere with the execution of the orders of either House or of committees of either House is a contempt of such House.

Absconding in order to avoid being served with a summons to attend either House or a committee thereof is an instance of this kind of misconduct (*case of Spencer and Beckett*, C. J. (1774-76) 324, 347,

357, 358, 370; *Hallett's Case*, C. J. (1819) 530; *case of Sir William Manners and Jarvis*, C. J. (1820) 404; *Stanbury's Case*, C. J. (1826-28) 297; *cases of Dasent, Bond, Cooke, Clamp and Pilgrim*, C. J. (1835) 324, 330; *Hurn's Case*, C. J. (1843) 333; *Waggett's Case*, C. J. (1851) 147; *cases of Skegg and Birchmore*, C. J. (1851) 152).

Aiding and abetting persons whose attendance is required as witnesses before the House or a committee thereof in keeping out of the way (*cases of Sparrowe, Clipperton and O'Malley*, C. J. (1835) 324, 330).

Offering to give money or a situation of profit to a person for him to procure a letter in the possession of another person which the latter had been required to produce before a committee (*Sheridan's Case*, C. J. (1806-07) 176).

Endeavouring to persuade or induce a person to procure from another person a letter which such person had been required to produce before a committee (*case of Johnston, Homan and Edmunds*, C. J. (1806-7) 175).

Assisting one Flood (or Floode) to escape from the custody of a Serjeant of the Sheriff of London to whom he had been delivered by the Serjeant at Arms in pursuance of an order of the House (*Creketoste's (or Cryketoste's) Case*, C. J. (1547-1628) 21).

### ABUSE OF THE RIGHT OF PETITION

Any abuse of the right of petition will be treated by either House as a breach of privilege.

The following are instances of abuse of the right of petitioning :

Frivolously, vexatiously or maliciously preferring to either House a petition containing false, scandalous or groundless allegations against any person, whether a member of such House or not, or contriving, promoting and prosecuting such petitions (*Brooke's Case* (1625), L. J. (1620-28) 462; *Lamplugh's Case* (1628), L. J. (1620-28) 741; *Sir George Meggott's Case*, C. J. (1693-97) 371; *Robe's and Le Bas's Case*, C. J. (1732-37) 897; *Stephens's Case*, C. J. (1741-45) 288; *Dunbar's Case*, C. J. (1768-70) 855; *Bawdon's Case*, C. J. (1780-82) 315).

Presenting a petition to the House of Lords containing gross misrepresentations (*Phelan's Case* (1733), L. J. (1731-36) 384).

Inducing parties to sign a petition by false representations (*case of Isaac and others*, L. J. (1862) 300, 321, 323, 331, 378, 383, 386).

Sending a letter to a Member threatening to prefer a petition to the House of Commons charging him with misconduct unless he bestowed a certain office in his gift upon the writer's son (*Grady's Case*, C. J. (1819) 159, Parl. Deb. (1819) 39, c. 633).

### PRESENTING FORGED, FALSIFIED OR FABRICATED DOCUMENTS TO EITHER HOUSE OR COMMITTEES OF EITHER HOUSE

It is a breach of privilege to present or cause to be presented to either House or to committees of either House forged, falsified, or fabricated documents with intent to deceive such House or committees or to subscribe the names of other persons or fictitious names to documents intended to

be presented to either House or committees of either House, or to be privy to, or cognizant of, such forgery or fraud.

Examples of this kind of contempt are :

Forging signatures to petitions or subscribing fictitious signatures thereto (*Pilkington's Case*, C. J. (1825) 445; *Potts's Case*, C. J. (1843) 523, 528; *cases of Strutt and Cunningham*, C. J. (1851) 288, 289; *cases of Byrne and others*, L. J. (1850) 367; *cases of Mitchell and others*, C. J. (1865) 336; and *Bidmead's Case*, C. J. (1887) 306).

Tampering with a petition (*Lovibond's Case*, C. J. (1839) 205, 210, 236, 278; Parl. Deb. (1839) 47, c. 1068).

Forging Counsels' names to an appeal without their knowledge (*Mynde's Case* (1716), L. J. (1714-18) 345, 349, 353, 356-57, 363).

Fabrication of documentary evidence (*Martin's Case*, C. J. (1889) 311, 332, 346, 363; Parl. Deb. (1889) 338, c. 410).

Making an alteration in a paper ordered to be laid before the House of Lords after the order in that behalf had been received by him (*Stanley's Case*, L. J. (1841) 251).

Causing a petition to be presented to the House well knowing, or having good reason to believe, that numerous fictitious signatures were attached to the petition and that the names of persons had been subscribed thereto without their authority (*case of Gream and Gage* L. J. (1850) 477).

### CONSPIRACY TO DECEIVE EITHER HOUSE OR COMMITTEES OF EITHER HOUSE

It has already been seen that the giving of false evidence, prevarication or suppression of the truth by witnesses while under examination before either House or before committees of either House is punished as a contempt; and that persons who present false, forged or fabricated documents to either House or to committees of either House are guilty of a breach of privilege. Conspiracy to deceive either House or any committees of either House will also be treated as a breach of privilege.

See *Cater's Case* (1724), L. J. (1722-26) 406; *case of Campbell and others*, C. J. (1727-32) 568.

### ABSTRACTING OR ALTERING DOCUMENTS PRESENTED TO THE HOUSE

To abstract any record or other document from the custody of the Clerk or to falsify or improperly alter any records of, or documents presented to either House or committees of either House will constitute a contempt.

On 4 May, 1780 the Commons resolved, "That the papers and accounts presented to this House be carefully preserved by the Clerk in whose custody they are intrusted; and that no person be permitted to take the same from the House under any pretence whatever; and if any person shall presume to take any papers or accounts from the House, that the said Clerk do forthwith acquaint Mr. Speaker, that the House may be informed thereof," and "That it is highly criminal, and a breach of the privilege of this House for any person whatever to make any alterations in papers or accounts presented



to this House, without the special order of the House" (C. J. (1778-80) 838).

## MISCONDUCT OF MEMBERS OR OFFICERS OF EITHER HOUSE AS SUCH

### CORRUPTION IN THE EXECUTION OF THEIR OFFICE AS MEMBERS

The acceptance by any Member of either House of a bribe to influence him in his conduct as such Member or of any fee, compensation or reward in connection with the promotion of, or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof is a breach of privilege.

In 1677 Mr. John Ashburnham was expelled for receiving £500 from the French merchants for business done in the House (C. J. (1667-87) 24). In 1694 Mr. Guy, Secretary to the Treasury, was committed to the Tower for taking a bribe of two hundred guineas (C. J. (1693-97) 236; 5 Parl. Hist. 886). In the same year Sir John Trevor was declared guilty of a high crime and misdemeanour in having, while Speaker of the House, accepted a gratuity of a thousand guineas from the City of London after passing the Orphans Bill, and was expelled (C. J. (1693-97) 274; 5 Parl. Hist. 900-910), and Mr. Hungerford was expelled for receiving twenty guineas for his pains and service as chairman of the committee on that bill (C. J. (1693-97) 283; 5 Parl. Hist. 911).

It would also be a breach of privilege for a Member to enter into an agreement with another person, for a sum of money, to advocate and prosecute in the House the claims of such person (see proceedings and report on Edward Coffey's petition, C. J. (1857-58) 68, 77; Parl. Deb. (1858) 148, c. 1855; H. C. 115, p. iii (1857-58); see also *ibid.* 5 (1940-41).

### ACCEPTANCE OF FEES BY MEMBERS FOR PROFESSIONAL SERVICES CONNECTED WITH PROCEEDINGS IN PARLIAMENT

The House of Commons has not confined itself to the repression of direct pecuniary corruption. To guard against indirect influence it has forbidden the acceptance of fees by its members for professional services connected with proceedings in Parliament. Thus a Member is not permitted to practise as counsel before the House or any committee; and it is not consistent with parliamentary (or, it may be added, with professional) usage for Members to advise, as counsel, upon any private bill, or other proceeding in Parliament.

It has also been declared contrary to the law and usage of Parliament for any Member to be engaged, either by himself or any partner, in the management of private bills before either House of Parliament for pecuniary reward (*b*), and, upon the same grounds, it was ordered on 6 November, 1666, "That such members of this House as are of the long robe shall not be counsel on either side, in any bill depending in the Lords' House, before such bill shall come down from the Lords' House to this House" (*c*).

In 1820, certain Members were permitted to plead as counsel at the bar of the House of Lords against and in support of the bill then pending con-

(*b*) C. J. (1830) 107.

(*c*) C. J. (1660-67) 646; but see *ibid.* 322 and C. J. (1667-87) 86.

cerning Queen Caroline under the particular circumstances of the case ; but the House ordered that this was not to be drawn into a precedent (C. J. (1819-20) 444 ; Parl. Deb. (1820) 2, c. 400). It was also understood that, if the bill should be received by the Commons, none of these gentlemen would be permitted to vote upon it.

In 1842, leave was given to Mr. Roebuck to plead at the bar of the House of Lords in support of the Sudbury Disfranchisement Bill which had already passed the Commons (C. J. (1842) 499). But in 1846 the House declined to permit Mr. Charles Buller to attend as counsel before the House of Lords upon the Bolton Waterworks Bill, which had passed the Commons and had been sent up to the other House ; the Speaker saying that in Mr. Roebuck's case the bill involved a matter of public policy, but that he knew of no precedent of leave being given to a Member to plead before the House of Lords on a private bill (C. J. (1846) 627 ; Parl. Deb. (1846) 86, c. 92).

It was formerly the custom to give leave to Members to plead at the bar of the House of Lords on appeals, the last instance being in 1710 (C. J. (1708-11) 436), since which time Members have been accustomed to plead without leave in all judicial cases before the House of Lords and before the Committee for Privileges (Parl. Deb. (1820) 2, c. 402).

The acceptance by a member of either House of a fee, compensation, gift or reward for drafting, advising upon or revising any bill, petition or other document submitted or intended to be submitted to either House of Parliament or any committee thereof would also be a breach of privilege.

#### ADVOCACY BY MEMBERS OF MATTERS IN WHICH THEY HAVE BEEN CONCERNED PROFESSIONALLY

On 22 June, 1858, the House of Commons resolved, "That it is contrary to the usage and derogatory to the dignity of this House that any of its members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward " (d).

This resolution has been held not to preclude a Member who has been concerned in a criminal case which has been decided from taking part in a debate relating to the case (Parl. Deb. (1893) 8, c. 1055).

#### OTHER FORMS OF MISCONDUCT

Neglect or breaches of duty by members or officers of either House, other than corruption in the execution of their office and cognate offences, may also be treated as contempt.

As instances of misconduct on the part of members or officers of either House which would be regarded as contempt, the following may be mentioned :

The refusal of a member to serve on a committee when his attendance, as in the case of a private bill committee, is made compulsory by standing or other orders (*Smith O'Brien's Case*, C. J. (1846) 582, 583, 603 ; Parl. Deb. (1846) 85, cc. 1071, 1152, 1292, 1300, 1351 ; *ibid.* 86, cc. 966, 1198).

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(d) C. J. (1857-8) 247 ; see also *ibid.* (1884) 167.

Giving evidence elsewhere in relation to any debates or proceedings in the House of which he is a member or officer, or any committee thereof (Resolution of the Commons of 26 May, 1818, C. J. (1818) 389; Parl. Deb. (1828) 18, cc. 971-72).

Attending as a witness before the other House or any committee thereof without the leave of the House of which he is a member or officer.

Wilful neglect of the Serjeant at Arms to take into his custody persons committed thereto (*Sir James Norfolk's Case*, C. J. (1667-68) 351; 3 Grey. Deb. 233-38).

Failure of an officer of the House of Lords duly to execute an order for the attachment of certain persons (*Holinshead's Case* (1730), L. J. (1726-31) 536).

Serjeant at Arms permitting persons committed to his custody to have their liberty and discharge without any order of the House in that behalf (*Wybergh's Case*, C. J. (1714-18) 436, 455, 456, 458).

Doorkeepers admitting strangers into the House contrary to the order of the House (L. J. (1722-26) 476).

## CONSTRUCTIVE CONTEMPTS

### SPEECHES OR WRITINGS REFLECTING ON EITHER HOUSE

In 1701 the House of Commons resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House (e), and indignities offered to their House by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.

For instances of breach of privilege by publishing false or scandalous libels on either House or its proceedings, see the cases of *Hall*, 1 Hatsell 93; *Aleyn*, C. J. (1547-1628) 126, 925, 927, etc.; D'Ewes 291-98; *Scott*, C. J. (1790) 508, 516; *Lambert and Perry* (1798), L. J. (1796-98) 506, 509; *Stuart*, C. J. (1805-6) 214, 216; Parl. Deb. (1805) 4, cc. 381, 384; *Burdett*, C. J. (1810) 252; Parl. Deb. (1810) 16, cc. 136, 257, 454; *Burdett v. Abbot* (1811) 14 East 1; and *Hobhouse*, C. J. (1819-20) 55, 57; Parl. Deb. (1819) 41, cc. 1009-1026.

For instances of breach of privilege by speaking words defamatory of either House or its proceedings, see the cases of *Thrower*, C. J. (1547-1628) 60; *Bland* (1586), D'Ewes, 366; the *Archdeacon of Bath*, C. J. (1640-42) 63; *Bowen* (1660), L. J. (1660-66) 87, 88; *Briggs*, C. J. (1688-93) 512; *Nowis (or Nois)*, C. J. (1693-97) 277; *Meggott*, C. J. (1693-97) 371; *Duncomb*, C. J. (1693-97) 651; *Haynes*, C. J. (1699-1702) 124, 126; *Culpepper*, C. J. (1699-1702) 735; *Cocks* (1715), L. J. (1714-18) 132; *Bishop and Others* (1724), L. J. (1722-26) 365; *Partridge* (1724), L. J. (1722-26) 367, 380; *O'Connell*, C. J. (1837-38) 306, 307, 312, 313, 316; *Mr. John*, C. J. (1921) 393; H. C. Deb. (1921) 148, c. 228; *Dr. Salter*, C. J. (1926) 338, 340;

(e) C. J. (1699-1702) 767.

H. C. Deb. (1926) 199, cc. 561, 709; and *Mr. Sandham*, C. J. (1929-30) 477, 489, 503; H. C. Deb. (1929-30) 242, cc. 42, 309, 742).

PUBLICATION OF FALSE OR PERVERTED REPORTS OF DEBATES, ETC.

Analogous to the publication of libels upon either House is the publication of false or perverted, or of partial and injurious reports of debates or proceedings of either House or committees of either House or misrepresentations of the speeches of particular members. But as the Commons have repeatedly made orders forbidding the publication of debates or other proceedings of their House or any committee thereof (*f*) which, though not renewed in any subsequent session are considered to be still in force, it has been ruled that an alleged misrepresentation is not in itself a proper matter for the consideration of the House, the right course being to call attention to the report as an infringement of the orders of the House, and then to complain of the misrepresentation as an aggravation of the offence (*g*) (see p. 54). But a different rule appears to prevail in the *Lords* (*h*), although they, too, have a standing order (S.O. LXXIII) which forbids any person whatsoever to print, or publish in print, anything relative to the proceedings of their House.

Although as recently as 31 May, 1875 the House of Commons rejected a motion made by Lord Hartington, "That this House will not entertain any complaint in respect of the publication of the debates or proceedings of the House, or of any committee thereof, except when such debates and proceedings shall have been conducted with closed doors, or when such publication shall have been expressly prohibited by the House or any committee, or in case of wilful misrepresentation or other offence in relation to such publication" (*i*), the principle upon which both Houses act is sufficiently acknowledged. So long as the debates are correctly and faithfully reported, the orders which prohibit their publication are not enforced; but when they are reported *malâ fide*, the publishers of newspapers are liable to punishment.

The following are instances of misconduct in connection with the publication of debates which has been treated as a breach of privilege:

Publishing a false account of proceedings of the House of Lords (*Woodfall's Case* (1765), L. J. (1765-67) 212).

Publishing scandalous misrepresentation of what had passed in either House or what had been said in debate (case of *Brown and Glassington* (1801), L. J. (1801-2) 57, 60; *Bell's Case*, C. J. (1821-22) 327; case of "*The Daily News*," C. J. (1893-94) 324).

Publishing gross or wilful misrepresentations of particular Members' speeches (*Matthews's Case*, C. J. (1778-80) 483, 491, 502; *Knowles's Case*, C. J. (1812) 432; Parl. Deb. (1812) 23, c. 584; case of *Bell and Collier*, C. J. (1819) 533, 537; Parl. Deb. (1819) 40, c. 1163; case of "*The Morning Herald*," C. J. (1819-20) 436, 451; case of "*The Times*" and "*The Sun*," L. J. (1847) 146; Parl. Deb. (1847) 91, c. 1150).

(*f*) C. J. (1640-42) 501; *ibid.* (1693-97) 193, 439; *ibid.* (1697-99) 48; *ibid.* (1702-04) 270; *ibid.* (1722-27) 99; *ibid.* (1727-32) 238; *ibid.* (1737-41) 148; *ibid.* (1750-54) 754; *ibid.* (1761-64) 207.

(*g*) 34 Parl. Hist. 150.

(*h*) L. J. (1765-67) 212; *ibid.* (1801-2) 60, 105.

(*i*) C. J. (1875) 243, Parl. Deb. (1875) 224, c. 48.

- Publishing under colour of a report of a Member's speech a gross libel on the character and conduct of another member (case of *Bell and Collier*, C. J. (1819) 533, 537; Parl. Deb. (1819) 40, c. 1163).
- Suppressing speeches of particular Members (*Lawson's Case* (case of "*The Times*"), C. J. (1833) 606; Parl. Deb. (1833) 20, cc. 6, 67; *Lawson's Case* (case of "*The Times*"), C. J. (1849) 254; Parl. Deb. (1849) 104, c. 1054).
- Publishing a proceeding which the House of Lords had ordered to be expunged from the Journals (case of *Macleod and Higginbottom* (case of "*The Albion and Evening Advertiser*") (1801), L. J. (1801-2) 104).
- Publishing a libel on counsel appearing before a committee under colour of a report of the proceedings of such committee (case of *Bell and Bonsor* (1800), L. J. (1798-1800) 638, 646).
- Publishing a forged paper, publicly sold as His Majesty's speech to both Houses (*King's Case*, L. J. (1756-60) 16; 15 Parl. Hist. 779).

#### PREMATURE PUBLICATION OF A COMMITTEE'S PROCEEDINGS OR EVIDENCE

By the ancient custom of Parliament "no act done at any committee should be divulged before the same be reported to the House" (*j*). Upon this principle the Commons, on 21 April, 1837, resolved, "That the evidence taken by any select committee of this House, and the documents presented to such committee, and which have not been reported to the House, ought not to be published by any member of such committee or by any other person" (*k*). Where the public are admitted this rule is usually not enforced (*l*). The publication of proceedings of committees conducted with closed doors or of reports of committees before they are available to Members, will, however, constitute a breach of privilege (*m*).

The circulation to Members individually, on the morning of the day after that on which the proceedings of a select committee had been published, of a draft report which had been submitted to the committee, but had not been entertained by them, has been held not to amount to a breach of privilege although it was evident that the draft report had been communicated to the printers before it had been made available to Members (H. C. Deb. (1934-35) 295, c. 389).

#### OTHER INDIGNITIES OFFERED TO EITHER HOUSE

Other acts besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such

(*j*) Clarendon (1826 ed.) ii, 159.

(*k*) C. J. (1837) 282.

(*l*) See the case of "*The Times*" and "*The Daily News*," Parl. Deb. (1875) 223, cc. 787, 1114.

(*m*) *Sheehan's Case*, C. J. (1831-32) 360. See also Report of the Select Committee on Postal Communications between London and Paris, H. C. 381, p. vi (1850), and 2nd Special Report of the Select Committee on the Cottage Homes Bill, H. C. 271, p. x (1899), C. J. (1899) 327; and see also H. C. 87 (1901), C. J. (1901) 80.

House into odium, contempt or ridicule or by lowering its authority may constitute contempts.

The following are instances of this type of contempt :

Disorderly conduct within the precincts of either House while such House is sitting (see cases of *Carye (or Carew) and Percy*, C. J. (1547-1628) 259, 260 ; Parliamentary Diary of Sir Robert Bowyer, p. 8 ; *Goodwyn*, C. J. (1646-48) 232 ; *Jones*, C. J. (1651-59) 410 ; *Rowe and Atkinson*, C. J. (1722-27) 185 ; and *Scrope*, C. J. (1761-64) 842).

Serving or executing civil process within the precincts of either House, at any rate if such House is sitting (*Bush's Case*, L. J. (1685-91) 298, 301 ; *Bell's Case*, Parl. Deb. (1827) 17, c. 34).

The service of criminal process upon a member of either House within the precincts of such House may, and his arrest within those precincts would, be a breach of privilege, at any rate while it is sitting, without the leave of the House first obtained (Report of the Select Committee on Privilege (Service of a Summons on a Member in the Outer Lobby), H. C. 411, p. iii (1888) ; cf. H.C. 101, p. 23 (1938-39)).

Sending the Speaker a letter couched in very indecent and insolent terms, declaring that the writer would resist the execution of a warrant issued by the Speaker in pursuance of an order of the House (*Burdett's Case*, C. J. (1810) 260, 273 ; *Memoirs of Sir Samuel Romilly*, ii, 312).

Forging the process (*Alcock's Case*, C. J. (1806-7) 288, 196) or counterfeiting an order (*Stephen's Case* (1660), L. J. (1660-66) 91) of either House.

Slighting and contemning an order of either House (*Hunt's Case* (1660), L. J. (1660-66) 131).

## OBSTRUCTING MEMBERS OF EITHER HOUSE IN THE DISCHARGE OF THEIR DUTY

### ARREST OF MEMBERS

It is a contempt to cause or effect the arrest, save on a criminal charge, of a member of the House of Commons during a session of Parliament, or during the forty days preceding, or the forty days following, a session.

See cases of *Harrod and Pocklington*, C. J. (1722-27) 504 ; and *Butler*, C. J. (1809) 210, 213 ; Parl. Deb. (1809) 14, c. 31. For arrest of Member through mistake in identity, see C. J. (1888) 30 ; Parl. Deb. (1888) 322, c. 262.

The privilege from arrest does not extend to criminal charges, and upon the same principle the internment of a Member under regulations made to prevent a breach of the peace has been held not to constitute a breach of privilege (H. C. Deb. (1922) 159, c. 290 ; H. C. 164 (1939-40)).

Although the privilege from arrest does not extend to criminal charges, it is the right of each House to receive immediate information of the imprisonment or detention of any Member, with the reason for which he is detained (1 Blackstone's Commentaries (1862 ed.) 148). The failure of a judge or magistrate to inform the House of the committal to prison of a Member on a criminal charge or for a criminal offence would, therefore, constitute a breach of privilege, though it is otherwise where a Member is convicted but

released on bail pending an appeal (Parl. Deb. (1902) 113, c. 234), or where a person who is in prison under the sentence of a court is elected a Member (H. C. Deb. (1917) 93, c. 1786) (see pp. 73-4).

It may be mentioned here that, by the privilege of peerage, peers are privileged from arrest in civil causes not only while Parliament is sitting but at all times, and that this privilege is enjoyed by all peers, whether lords of Parliament or not, and by peeresses. Breaches of this privilege are visited with punishment by the Lords, see cases of *Isaac and Flashman* (1811), L. J. (1810-11) 58, 60; and of *Palmer, Tanner and Camp* (1828), L. J. (1828) 15, 21, 34.

The general privilege of freedom from arrest is described in Chapter V.

#### SUMMONING MEMBERS AS WITNESSES OR JURORS

Members of both Houses are, by the law and custom of Parliament, exempted from attendance as witnesses during the session of Parliament, and from service as jurors at all times by the Juries Act, 1870 (see p. 76).

But, according to present usage, the service of a *subpœna* on a Member during the session of Parliament, unless effected within the precincts of the House, *sedente domo* (see p. 75), would not, as a general rule, be regarded as a breach of privilege.

On 30 June, 1938, however, the Committee of Privileges reported that an order requiring the attendance of a Member, who was also a Territorial officer, to attend as a witness before a military court of inquiry was a breach of the privileges of the House and, on 11 July, the House resolved that it agreed with the Committee in their report (H. C. 146, p. 3 (1937-38), C. J. (1937-38) 351). The circumstances of the case were, however, peculiar. The Court of Inquiry had been appointed to inquire into the circumstances in which certain highly secret information had been disclosed to the Member in question. Previous to the appointment of the Court of Inquiry the Member had complained to the House that an attempt had been made by a minister of the Crown to compel him to disclose the source of his information by threatening him with proceedings under Section 6 of the Official Secrets Act, 1920. The Speaker had said that the proper course was for the Member to give notice of a motion so that the question could be discussed by the House, and the Prime Minister had undertaken to find time for the discussion of such a motion. The Member had thereupon given notice of a motion for the appointment of a select committee to inquire into the substance of his complaint and, generally, into the question of the applicability of the Official Secrets Acts to Members of the House in the discharge of their parliamentary duties (H. C. Deb. (1937-38) 337, cc. 1534-40). As the Committee of Privileges observed in their report, in these circumstances the summons to the Member bore the appearance of an attempt to compel him to give certain information at a time when the House was about to set up a committee to consider, among other things, the propriety of his being asked to give such information.

Any attempt to punish a Member who refused to attend as a witness might, however, be treated as a breach of privilege, unless permission had previously been granted by the House for his attendance.

#### MOLESTATION OF MEMBERS WHILE IN THE EXECUTION OF THEIR DUTIES

It is a breach of privilege to molest a member of either House while attending such House or when coming to or going from it.

The Commons, on 12 April 1733 and the Lords on 17 May 1765, resolved, "That the assaulting, insulting or menacing any member of this House, in his coming to or going from the House, or upon the account of his behaviour in Parliament, is an high infringement of the privilege of this House, a most outrageous and dangerous violation of the rights of Parliament and an high crime and misdemeanour" (u); and on 6 June 1780 the Commons resolved, "That it is a gross breach of the privilege of this House for any person to obstruct and insult the members of this House in the coming to, or going from, the House, and to endeavour to compel members by force to declare themselves in favour of, or against any proposition then depending or expected to be brought before the House" (o).

For instances of the punishment of Members and others for molesting Members within the precincts of the House, see the cases of *Hitchcott*, C. J. (1646-48) 42; *Franklyn*, C. J. (1660-67) 186; *Mompesson*, C. J. (1688-93) 348, 354, 355; *Holt*, C. J. (1688-93) 782; *Gourlay*, C. J. (1824) 483; *Parl. Deb.* (1824) 11, c. 1204; *Dr. Kenealy*, C. J. (1877) 144; *Parl. Deb.* (1877) 233, c. 951; and *Dr. Tanner*, C. J. (1887) 377, 389; *Parl. Deb.* (1887) 317, cc. 1167, 1631. *Mompesson's* and *Gourlay's* are cases of assault; the remainder are cases of the use of insulting or abusive language.

In 1751 *Mason*, a constable, for apprehending, insulting and abusing a Member about 11 o'clock at night in the Liberty of Westminster and detaining him in confinement all night, and *Carme*, the High Constable of the City and Liberty of Westminster, for refusing to discharge him except upon condition that he would take no notice of what had passed, were voted guilty of a breach of privilege and committed, C. J. (1750-54) 176.

#### ATTEMPTS BY IMPROPER MEANS TO INFLUENCE MEMBERS IN THEIR PARLIAMENTARY CONDUCT

**Bribery.**—On 2 May, 1695, the Commons resolved, "That the offer of money, or other advantage, to any member of Parliament for the promoting of any matter whatsoever, depending or to be transacted in Parliament is a high crime and misdemeanour and tends to the subversion of the English constitution" (p).

In the spirit of this resolution, the offering to a member of either House of a bribe to influence him in his conduct as a member, or of any fee or reward in connection with the promotion of, or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof, has been treated as a breach of privilege.

See cases of *Freeman and Dalby Thomas*, C. J. (1697-99) 538; *Quin*, C. J. (1714-18) 493; and *Vernon*, C. J. (1718-21) 542. See also H. C. 103 (1942-43).

It may be a contempt to offer any fee or reward to any Member or officer of either House for drafting, advising upon or revising any bill, resolution, matter or thing intended to be submitted to that House or any committee thereof.

(u) C. J. (1732-37) 115; L. J. (1718-21) 209.

(o) C. J. (1778-80) 902.

(p) C. J. (1693-97) 331.



Thus in 1694 one Bird was reprimanded for offering Mr. Musgrave, a Member and gentleman of the long robe a guinea fee for preparing a petition (C. J. (1693-97) 274, 275 ; 5 Parl. Hist. 910).

**Attempted Intimidation of Members.**—To attempt to influence Members in their conduct by threats is also a breach of privilege.

Examples of this kind of misconduct are :

Publishing statements impugning the conduct of Members and threatening them with further exposure if they took part in the debates of the House (*Plimsoll's Case*, C. J. (1873) 60 ; Parl. Deb. (1873) 214, c. 733).

Sending a letter to Members setting out a list of questions referring to proposed legislation to make certain sports illegal, and intimating that, if the writer did not hear from such Members, he would feel justified in letting their constituents know that they had no objection to cruel sports (C. J. (1934-35) 201 ; H. C. Deb. (1934-35) 301, c. 1545).

**Private Solicitation of Members.**—On 6 June, 1803, the Lords resolved that the private solicitation of Members on matters of claims to honours or other judicial proceedings was a breach of privilege (q). Upon the same principle, it would be a breach of privilege when Members are acting in a judicial or quasi-judicial capacity, e.g. when serving on committees on private bills, to attempt, by letters, anonymous or other, to influence them in the discharge of their duties (r).

In 1811 the Lords resolved that it was a breach of privilege to send a peer a printed paper, signed "Andrew Ross, Aide-de-Camp to the King," requesting his attendance, with his friends, at a committee on a private Bill (case of *Ross and Maxwell*, L. J. (1810-11) 332, 341).

In 1884 a complaint was made of the issue by a Member of a circular with reference to a notice of opposition to the third reading of a private bill, stating that his son was the solicitor for the bill, and requesting Members "as a very great personal favour," to attend and support the third reading of the bill. A motion was made, that the issue of the circular was a gross breach of the privileges of the House. The Member explained the circumstances attending the issue of the circular and expressed his regret that it should have contained any matter to which the House could take exception, and the House resolved that, in view of this apology, it would proceed to the further consideration of the private business appointed for the day (C. J. (1884) 167 ; Parl. Deb. (1884) 287, c. 11).

#### ACTS TENDING INDIRECTLY TO OBSTRUCT MEMBERS IN THE DISCHARGE OF THEIR DUTY

Conduct not amounting to a direct attempt to influence a Member in the discharge of his duties, but having a tendency to impair his independence in the future performance of his duty, will also be treated as a breach of privilege.

**Molestation of Members on Account of their Conduct in Parliament.**—It is a breach of privilege to molest any Member of either House on account of his conduct in Parliament.

(q) L. J. (1802-3) 227.

(r) H. C. Deb. (1921) 145, c. 831.

The following are instances of this type of contempt :

Challenging Members to fight on account of their behaviour in the House or any committee thereof (*Swift's Case*, C. J. (1780-82) 535, 537; *Smyth's Case*, Parl. Deb. (1844) 74, c. 286; *Somers's Case*, C. J. (1845) 589; *The O'Donoghue's Case*, C. J. (1862) 42) or even on account of remarks made outside the House which touched proceedings in the House (*O'Kelly's Case*, C. J. (1883) 232, 238).

Writing letters to a Member taking notice of speeches said to have been made by him in the House and threatening to contradict them from the gallery (*Jennings's Case*, C. J. (1827) 399; Parl. Deb. (1827) 17, cc. 282, 343).

Sending insulting letters to Members in reference to their conduct in Parliament or letters reflecting on their conduct as such Members (*Woodcock's Case* (1831), L. J. (1830-31) 285, 335; *Reed's Case*, C. J. (1863) 80, 84; *Atkinson's Case*, C. J. (1890-91) 481; Parl. Deb. (1891) 356, c. 419).

Threatening to inflict pecuniary loss upon a Member on account of his conduct in Parliament (case of the *Guardians of Mullingar*, C. J. (1898) 381).

**Reflections upon Members.**—Analogous to molestation of Members on account of their behaviour in Parliament are speeches and writings reflecting upon their conduct as Members. On 26 February 1701, the House of Commons resolved that to print or publish any libels reflecting upon any member of the House for or relating to his service therein, was a high violation of the rights and privileges of the House (s).

"Written imputations, as affecting a member of Parliament, may amount to breach of privilege, without, perhaps, being libels at common law" (t), but to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the Member in that capacity, and the conduct or language on which the libel is based must be actions performed or words uttered in the actual transaction of the business of the House.

See Speakers' rulings, Parl. Deb. (1887) 311, c. 286; *ibid.* (1887) 313, c. 1801; [*ibid.* (1888) 323, c. 1312]; C. J. (1890) 221; Parl. Deb. (1890) 343, c. 181; *ibid.* (1896) 38, c. 1177; *ibid.* (1902) 101, c. 58; *ibid.* (1906) 165, c. 1254; *ibid.* (1907) 171, c. 876; *ibid.* (1908) 192, c. 1738.

For example, aspersions upon the conduct of Members as magistrates, or officers in the army or navy (H. C. Deb. (1909) 5, c. 415), or as counsel (Parl. Deb. (1875) 222, c. 1185), or employers of labour, or in private life, or otherwise than in relation to Parliament, are not fit subjects for complaints to the House of Commons, even if the inference is to be drawn that they are unworthy to sit in Parliament (Parl. Deb. (1896) 38, c. 1359). Reflections on Members even in their parliamentary capacity have been ruled not to constitute a breach of privilege because *mala fides* was not imputed (Parl. Deb. (1888) 323, c. 1312; *ibid.* (1906) 158, c. 1124), or because the charge was indefinite (H. C. Deb. (1929) 232, c. 2153).

A libel on a Member's extra-parliamentary conduct may, however, constitute a breach of privilege if it is designed to influence the proceedings of the House (Parl. Deb. (1890) 341, c. 43); and to charge Members with

(s) C. J. (1699-1702) 767.

(t) Holt, Law of Libel, 2nd ed., p. 118 (1816).

conduct which renders them unworthy to sit in Parliament and to criticise the House for not expelling them would be a libel upon the House.

But a charge that the Commons included men "who draw . . . their living and their notoriety from the steady perpetration of crimes" was ruled not to be a case of privilege, *Parl. Deb.* (1887) 311, c. 286.

Similarly, a statement has been made that "the foul-mouthed oratory" of some Members "would not be listened to by any decent people if it were bawled about the streets"; but a motion complaining that this was a breach of privilege was withdrawn, *C. J.* (1888) 420.

As examples of speeches and writings which have been held to constitute breaches of privilege may be mentioned:

Reflections on the character of the Speaker and accusations of partiality in the discharge of his duty (cases of *Woodfall*, *C. J.* (1772-74) 452, 456; *Mr. Coneybeare*, *Parl. Deb.* (1887) 313, c. 371; *C. J.* (1888) 385; *Parl. Deb.* (1888) 329, c. 48; *Mr. Atkinson*, *C. J.* (1890-91) 481; *Parl. Deb.* (1890-91) 356, c. 419; see also *C. J.* (1893-94) 123, 408, 416; *Parl. Deb.* (1893-94) 9, c. 1866; *ibid.* 14, cc. 820, 1094; *Mr. Wedgwood and Mr. Ginnell*, *C. J.* (1911) 34, 36; *H. C. Deb.* (1911) 21, cc. 1435, 1553; *Mr. Pointer*, *H. C. Deb.* (1911) 29, c. 34; and "*The Daily Worker*," *C. J.* (1937-38) 213).

Reflections upon the conduct of the Lord Chancellor in the discharge of his judicial duties in the House of Lords (*Bittleston's Case* (1834), *L. J.* (1834) 704, 737, 743; *Parl. Deb.* (1834) 24, cc. 892, 941, 1006, 1065).

Reflections upon the conduct of the Chairman of Committees (*France's Case* (1867), *L. J.* (1867) 31, 33, 46, 72).

Reflections upon the impartiality of the Chairman of Ways and Means (cases of *Mr. Whitwell Wilson*, *H. C. Deb.* (1909) 8, c. 31; "*The Evening News*," *C. J.* (1928-29) 50; and *Miss Wilkinson*, *C. J.* (1928-29) 156, 159).

Reflections upon the conduct of the Chairman of a Standing Committee (case of "*The Daily Herald*," *C. J.* (1924) 180; Report of the Committee of Privileges, *H. C.* 98 (1924)).

Imputing unfair conduct to the Chairman of a Select Committee (*France's Case*, *C. J.* (1874) 181, 189; *Parl. Deb.* (1874) 219, cc. 752, 755).

Imputations against Members serving on private bill committees (*C. J.* (1831-32) 278, 294; *C. J.* (1857-58) 189, 196, 201; *Parl. Deb.* (1857-58) 150, c. 1022, 1063, 1198, etc.; see also *H. C. Deb.* (1909) 7, c. 235; *ibid.* (1921) 145, c. 831).

Imputations against Members of corruption in the execution of their duties (cases of *Carr*, *C. J.* (1667-87) 88, 95; *Noble*, *C. J.* (1732-37) 245; *Cundy*, *C. J.* (1836) 658, 676; *Parl. Deb.* (1836) 35, cc. 167, 255; and *Knox*, *C. J.* (1893-94) 631; *Parl. Deb.* (1893-94) 20, c. 112).

Asserting that he could control the decision of a committee on a private bill and offering to do so for a corrupt consideration (*Grissell's Case*, *C. J.* (1878-79) 326, 366; *Parl. Deb.* (1879) 247, cc. 1866, 1956; *ibid.* 248, cc. 602, 633, 971, 1100; Report of the Select Committee on Privilege (Tower High Level Bridge (Metropolis) Committee), *H. C.* 294 (1878-79)) and being cognizant of, and assisting in the matter of, such offer (*Ward's Case*, *ibid.*).

Publishing placards reflecting on the conduct of certain Members as "inhuman" and "degrading" (*Plimso's Case*, C. J. (1880) 46, 54; Parl. Deb. (1880) 250, cc. 797, 1108).

Sending a letter to Members complaining that a Member who had been nominated a member of a select committee would be unable to act impartially upon it (case of *Rees and Hindley*, C. J. (1900) 178).

Reference may also be made to the recent cases of "*The Daily Mail*," C. J. (1901) 355; *Armstrong and Madge*, C. J. (1901) 414, 418; "*The Daily Mail*," C. J. (1926) 95, 99; and *Mr. MacNeill Weir*, C. J. (1935-36) 203; H. C. Deb. (1935-36), 311, c. 1349).

For many other cases see General Index to the Journals, under Privileges or under Complaints.

Both Houses will punish not only contempts arising out of facts of which the ordinary courts will take cognizance, but those of which they cannot, such as contemptuous insults, gross calumny or foul epithets by word of mouth not within the category of actionable slander or threat of bodily injury.

**Misrepresenting Members' Proceedings.**—Wilful misrepresentation of the proceedings of Members is an offence of the same character as a libel.

On 22 April, 1699, the Commons resolved, "That the publishing the names of the Members of this House and reflecting upon them, and misrepresenting their proceedings in Parliament, is a breach of the privilege of this House, and destructive of the freedom of Parliament" (u).

## OBSTRUCTING OFFICERS OF EITHER HOUSE

### ARREST OF OFFICERS OF EITHER HOUSE

A privilege from arrest, similar to that enjoyed by Members of the House of Commons, is attached to officers of either House in immediate attendance upon the service of Parliament (a). To arrest or procure the arrest of any such person save on a criminal charge is consequently a contempt of the House whose officer he is.

See cases of *Kelly*, *Anderson* and *Sparrow* (1718), L. J. (1718-21), 96; and *Pope*, C. J. (1727-32) 43.

### SUMMONING OFFICERS OF EITHER HOUSE AS WITNESSES OR JURORS

Upon the principle already explained as regards Members (see p. 120) it would be a breach of privilege to punish an officer of either House for not attending as a witness upon *subpœna* during the session of Parliament. But the mere serving of a *subpœna* upon an officer of either House, will probably not be visited as a contempt unless he is subpœnaced to give evidence touching proceedings within the walls of Parliament and permission has not been granted for his attendance by the House of which he is an officer or unless the *subpœna* is served within the precincts of the House of which he is an officer, *sedente domo*.

(u) C. J. (1699-1702) 767.

(a) Lex Parl. 380; 1 Hatsell, 9, 11, 172

It would similarly be a contempt to summon an officer of either House, knowing him to be such, to serve upon a jury during the session of Parliament or to refuse to excuse him from attending or serving as a juror or to punish him for non-attendance.

By the Juries Act, 1870, the officers of both Houses are included among the persons exempted from serving on juries, without reference to the sitting of Parliament.

#### OBSTRUCTING OFFICERS OF EITHER HOUSE WHILE IN THE EXECUTION OF THEIR DUTY

It is a contempt to obstruct officers of either House or other persons employed by, or entrusted with the execution of the orders of either House, while in the execution of their duty.

Examples of this kind of contempt are :

Assaulting officers of either House (*Andrew's Case* (1719), L. J. (1718-21) 190; *Clarke's Case* (1805), L. J. (1805-6) 125; case of *Cox and others*, C. J. (1667-87) 193) or other persons entrusted with the execution of the orders of either House (*Seager's Case* (1790), L. J. (1787-90) 649; *Chaplain's* (or *Chapman's*) *Case* (1793), L. J. (1790-93) 665; *Lovewell's Case* (1794), L. J. (1794-6) 241; *Griffiths' Case*, C. J. (1732-37) 308; *Noble's Case*, C. J. (1750-54) 900, 904; *Ennison's* (or *Innys's*) *Case*, C. J. (1761-64) 126, 128) while in the execution of their duty.

Insulting or abusing officers of either House (*Heming's Case* (1805), L. J. (1805-6) 332, 340; *Broadhurst's Case* (1806), L. J. (1805-6) 608, 610; *Lewes's Case* (1811), L. J. (1810-12) 370, 399; case of *Rowe and Atkinson*, C. J. (1722-27) 185) or other persons entrusted with the execution of orders of the House (*Leeke's Case* (1787), L. J. (1783-87) 613; *Bitton's Case* (1787), L. J. (1783-7) 647; *Williams's Case* (1789), L. J. (1787-90) 338) while in the execution of their duty.

Using threatening language to a person employed to summon witnesses to attend a committee (*Littlehale's Case*, C. J. (1693-97) 512, 514) or resisting the Serjeant's messenger in executing an order of the House (*Owen's Case*, C. J. (1699-1702) 825).

Resisting the Serjeant at Arms, or his officers (cases of *Tompson*, C. J. (1660-67) 222; *Hastings and Crooke*, C. J. (1667-87) 341, and *Mr. Maxton and others*, C. J. (1930-31) 335, 338) or others acting in the execution of the orders of either House (*Perkins's Case*, C. J. (1732-37) 508, 511) in the execution of their duty.

Rescuing out of the custody of an officer of either House a person taken into custody by order of such House (case of *Parsons and others*, C. J. (1667-87) 193) or abetting such rescue (*Cox's Case*, C. J. (1667-87) 193).

Aiding a prisoner to escape from the custody of an officer of either House (*Andrews's Case* (1719), L. J. (1718-21) 190).

Refusal of civil officers to assist officers of either House when called upon to do so (*Eales's Case* (1660), L. J. (1660-66) 134; case of *Cox and Forder*, C. J. (1667-87) 193; *Blyth's Case*, C. J. (1667-87) 587).

Magistrate discharging out of the custody of an officer of the House of Commons a person arrested by order of the House (*Brass Crosby's Case*, C. J. (1770-72) 263, 285, 289).

Otherwise obstructing persons entrusted with the execution of the orders of either House (*Vaughan's Case*, C. J. (1761-64) 128; *Crosby's Case*, C. J. (1761-64) 130).

ACTS INDIRECTLY TENDING TO OBSTRUCT OFFICERS OF EITHER HOUSE  
IN THE PERFORMANCE OF THEIR DUTY

Both Houses will treat as breaches of their privileges, not only acts directly tending to obstruct their officers in the execution of their duty, but also any conduct which may tend to deter them from doing their duty in the future.

**Molestation of Officers of either House on account of their Conduct as such Officers.**—Neither House will suffer any person, whether an officer of the House or not, to be molested for executing its orders or the orders of its committees or on account of anything done by them in the course of their duty.

The following are instances of this type of contempt :

Assaulting, insulting, and abusing a committee clerk on account of acts done by him as clerk to a committee in the previous session of Parliament (*Barnett's Case*, C. J. (1718-21) 366, 370).

Abusing, striking, kicking, and beating a person who, having reason to believe that a person whom the House had ordered to be taken into custody was concealed in a certain place, went to a constable and desired him to go with him to secure the delinquent (*Baispole's Case*, C. J. (1667-87) 678).

**Legal Proceedings against Officers of either House.**—To commence proceedings in a court of law against any person for his conduct in obedience to the orders of either House or in conformity with its practice, or to be concerned in commencing or conducting such proceedings, is a breach of privilege.

In several instances persons have been committed or otherwise punished for bringing civil actions against officers or servants of either House (*Williams's Case*, C. J. (1737-41) 620, 623; *Bell's Case* (1827), L. J. (1826-27) 199, 206; Parl. Deb. (1827) 17, c. 34; *Stockdale's Case*, C. J. (1840) 11, 71, 93, 174) or other persons (*Biggs's Case* (1768), L. J. (1767-70) 185, 187, 197; case of *Bolton and others*, C. J. (1819-20) 230, 243, 286) for acts done by them in obedience to orders of such House or in the execution of their duty as officers of such House, or for being concerned as attorneys, in conducting such actions (*Lewis's Case*, C. J. (1737-41) 620, 623; *Aylett's Case* (1768), L. J. (1767-70) 185, 187, 197; case of *Frost and Rosser*, C. J. (1819-20) 230, 243, 286; *Howard's Case*, C. J. (1840) 23, 66; cases of *Howard junior*, and *Pearse*, C. J. (1840) 96), and on 17 February and 13 March 1840, the Commons resolved that persons acting or assisting, as sheriffs, under-sheriffs, agents, bailiffs, officers, clerks or otherwise in the continuing, furthering and prosecuting of such actions, were guilty of a breach of privilege (C. J. (1840) 93, 174).

In 1689 the Commons declared the overruling of the defendant's plea to the jurisdiction of the court in *Jay v. Topham*, an action brought against the

Serjeant at Arms for executing the orders of the House in arresting certain persons, to be a breach of privilege and committed Sir F. Pemberton and Sir T. Jones, who had been judges in the cause, to the custody of the Serjeant at Arms, C. J. (1688-93) 227.

Criminal prosecutions as well as civil actions, may amount to a breach of privilege.

The following are instances of contempt by prosecuting or being concerned in the prosecution of officers of either House :

Prosecuting a constable for an assault committed in the execution of an order of the House of Lords (*Hyde's Case* (1788), L. J. (1787-90) 249, 250, 251).

Magistrate issuing a warrant against an officer of the House of Lords for arresting a person by order of the House (*Sir James Butler's Case* (1695), L. J. (1691-6) 565).

Drawing an indictment against an officer of the House of Lords for an alleged assault committed in the execution of an order of the House (*Leighton's Case* (1695), L. J. (1691-6) 565).

Magistrates signing a warrant against an officer of the House of Commons for arresting a person upon a warrant issued by the Speaker and holding such officer to bail (case of *Brass Crosby and Oliver*, C. J. (1770-72) 263, 285, 289).

According to present usage, however, if an action be commenced against an officer of the House for his conduct in obedience to its orders or in conformity with its practice, the Commons give leave to the officer to appear in the action when the law officers of the Crown, either by the order of the House (*b*), or, upon the direction given by a minister of the Crown, undertake the officer's defence ; or, if it seems expedient, the Speaker can, at his discretion, place the defence of the officer in the hands of the Government.

## OBSTRUCTING WITNESSES

### ARREST OF WITNESSES

On 8 March, 1688, the Commons resolved, " That it is the undoubted right of this House that all witnesses summoned to attend this House, or any committee appointed by it, have the privilege of this House in coming, staying and returning " (*c*). Parties who arrest or procure the arrest on civil process of witnesses or other persons summoned to attend either House or any committee of either House while going to, attending, or returning from, such House or committee may be punished for contempt.

See *Goodall's* (or *Goodhall's*) *Case*, C. J. (1640-42) 454, 457 ; *Armstrong's Case* (1695), L. J. (1691-96) 529 ; *Leicester's Case*, C. J. (1697-99) 364, 367, 368, 386.

### SUMMONING WITNESSES TO SERVE ON JURIES, ETC.

Upon the same principle, viz., that the right of the High Court of Parliament to the attendance of witnesses is paramount, it will be a con-

(*b*) This course was pursued in the cases of *Burdett v. Abbot*, C. J. (1810) 355 ; *Howard v. Gosset*, *ibid.* (1843) 118 ; *Bradlaugh v. Erskine*, *ibid.* (1882) 182, 187 and *Bradlaugh v. Gossett*, *ibid.* (1883) 364, 370. See also *Lines v. Russell*, *ibid.* (1852) 64, 68.

(*c*) C. J. (1688-93) 45.

tempt not to excuse a person summoned to attend or in attendance as a witness before either House or any committee of either House from attending or serving as a juror, or to punish him for non-attendance as a witness or juror.

#### MOLESTATION OF WITNESSES

It is a contempt to molest any persons attending either House or committees of either House as witnesses during their attendance in such House or committee.

The following are instances of this form of misconduct :

Assaults upon witnesses in the precincts of the House, see *Stone's Case* (1697), L. J. (1696-1701) 144; *Taylor's Case*, C. J. (1718-21) 290; *French's Case*, C. J. (1826-28) 345, 351; Parl. Deb. (1827) 16, c. 1305; *ibid.* 17, c. 7).

The use of threatening language to witnesses within the precincts of the House (*Lewen's Case*, C. J. (1667-87) 54; *Grady's Case*, C. J. (1819) 233; Parl. Deb. (1819) 39, cc. 978, 986).

The use of insulting or abusive language to witnesses within the precincts of the House (*Carew Raleigh's Case*, C. J. (1648-51) 413).

#### TAMPERING WITH WITNESSES

To tamper with a witness in regard to the evidence to be given before either House or any committee of either House or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence is a breach of privilege.

A resolution to this effect was passed by the House of Commons on 21 February, 1700, and has been regularly renewed in every succeeding session, and in numerous instances persons have been punished for offences of this kind. (*Bond's Case*, C. J. (1640-42) 81; case of *Shepherd and Lawton*, C. J. (1699-1702) 400, 404; *Edgcomb's Case*, C. J. (1708-11) 433, 479; *Gray's Case*, C. J. (1727-32) 480; *Satchwell and Poulter's Case*, C. J. (1727-32) 711; *Williams's Case*, C. J. (1809) 35; Parl. Deb. (1809) 12, c. 460; *Keith's Case*, C. J. (1835) 324, 421, 478, 508; case of *Hayward and Edwards*, C. J. (1851) 147-48). See also *Johnson's Case*, Parl. Deb. (1857) 146, c. 97.

Corruption or intimidation, though a usual, is not an essential ingredient in this offence. It is equally a breach of privilege to attempt by persuasion or solicitations of any kind to induce a witness not to attend, or to withhold evidence or to give false evidence.

This matter was considered in 1935 by a committee of the Commons who reported that, in their opinion, it was a breach of privilege to give any advice to a witness which took the form of pressure or of interference with his freedom to form and express his own opinions honestly in the light of all the facts known to him; and the House resolved that it agreed with the committee in their report (Report of the Select Committee on Witnesses, H. C. 84, p. vii (1934-35); C. J. (1934-35) 294).

#### ACTS TENDING INDIRECTLY TO DETER WITNESSES FROM GIVING EVIDENCE

Any conduct which is calculated to deter prospective witnesses from giving evidence before either House or before committees of either House is a breach of privilege. It is upon this principle that witnesses are



protected from arrest, not only while going to or attending either House or committees of either House, but while returning from such House or committees.

**Molestation of Witnesses on account of their Attendance or Testimony as Witnesses.**—Upon the same principle any molestation of, or threats against persons who have given evidence before either House or before committees of either House will be treated by the House concerned as a breach of privilege.

The following are instances of this kind of misconduct :

Assaulting persons for having given evidence before committees or on account of the evidence which they have given before committees (*Baispole's Case*, C. J. (1667-87) 678 ; *Charteris's Case*, C. J. (1708-11) 503).

Threatening persons with personal violence on account of the evidence which they have given before the House or committees (C. J. (1688-93) 579 ; *Roop's Case*, C. J. (1708-11) 498, 503 ; *Grady's Case*, C. J. (1819) 223).

Insulting and abusing a witness on account of the evidence which he has given before a committee (*Tovey's Case*, C. J. (1714-18) 371).

Calling any person to account or passing a censure upon him, for evidence given by such person before the House or any committee thereof (Resolution of the Commons of 10 May, 1733, C. J. (1732-37) 146 ; case of the *Cambrian Railway Directors*, Special Report of the Select Committee on Railway Servants (Hours of Labour) H. C. 129 (1892) ; C. J. (1892) 129, 157, 166 ; Parl. Deb. (1892) 3, cc. 595, 698, 883).

Gaoler misusing prisoners in his custody in consequence of evidence given by them before committees (*Briggs's Case*, C. J. (1688-93) 514, 523, 534 ; *Bambridge's Case*, C. J. (1727-32) 247).

#### • LEGAL PROCEEDINGS AGAINST WITNESSES

Both Houses will treat the bringing of legal proceedings against any person on account of any evidence which he may have given in the course of any proceedings in the House or before one of its committees as a breach of privilege.

The House of Commons resolved on 26 May, 1818, " That all witnesses examined before this House, or any committee thereof, are entitled to the protection of this House in respect of anything that may be said by them in their evidence " (C. J. (1818) 389).

For instances in which persons have been committed or otherwise punished for bringing actions for slander in respect of evidence given before either House or before committees of either House, or for being concerned, as solicitors, in commencing or continuing such actions, see cases of *Sir George Meggott*, C. J. (1693-97) 591, 613 ; *Phillips and others*, C. J. (1845) 672, 680, 696 ; Parl. Deb. (1845) 81, c. 1436 ; and *Harbin and Harlow* (1845) L. J. (1845) 690, 712, 729 ; Parl. Deb. (1845) 82, cc. 431, 494.

#### MISCONDUCT AFFECTING PETITIONERS AND OTHERS SOLICITING BUSINESS BEFORE EITHER HOUSE

Petitioners and other persons soliciting business before either House or its committees, *e.g.* counsel, agents and solicitors, are considered as

under the protection of the High Court of Parliament, and obstruction of, or interference with such persons in the exercise of their rights or the discharge of their duties, or conduct calculated to deter them or other persons from preferring or prosecuting petitions or bills or from discharging their duties may be treated as a breach of privilege.

The following are instances of this type of contempt :

Causing or effecting the arrest on civil process of petitioners or others soliciting business before either House, knowing them to be such, during the continuance of their privilege from arrest *cundo, morando et redeundo* (C. J. (1547-1628) 702, 767, 787 ; *ibid.* (1644-46) 31).

Assaulting, insulting, or threatening persons attending to prefer petitions or others soliciting business before either House within the precincts of the House (case of *Amenz and Sir William Sharpe*, C. J. (1667-87) 341 ; *Day's Case* (1714), L. J. (1709-14) 752 ; *Allison's Case* (1832), L. J. (1831-32) 384, 387 ; Parl. Deb. (1832) 14, cc. 425, 495).

Threatening persons having bills depending in the House with punishment for their application to the House (*Camphire's Case*, C. J. (1757-61) 264, 274).

Speaking scandalous and reproachful words against petitioners whose petition is appointed to be heard (*Yendall's Case*, C. J. (1708-11) 446).

Assaulting and insulting the solicitor to opponents of a private bill (*Allison's Case* (1832), L. J. (1831-32) 384, 387) or challenging him to fight (*Abbs's and Thorpe's Cases* (1832), L. J. (1831-32) 388) on account of observations made by him when addressing the committee on the bill.

Sending an insulting letter to counsel in relation to a speech made by him at the bar of the House of Lords (*Wharton's Case* (1826), L. J. (1826) 128, 142, 145).

Bringing an action against petitioners for a libel alleged to be contained in a petition presented by them to the House of Commons (*Gee's Case*, C. J. (1693-97) 599, 699).

Publishing a libel on counsel in respect of his conduct while discharging his professional duties before a committee (case of *Bell and Bonsor* (1800), L. J. (1795-1800) 638, 646).

Casting aspersions on persons for having petitioned the House of Commons (*Montagu's Case*, C. J. (1547-1628) 805, 806).

## OFFENCES IN FORMER SESSION

Either House will punish in one session offences that have been committed in another (d).

On 4 and 14 April, 1707, it was resolved by the Commons, *nem. con.*, " That when any person ordered to be taken into the custody of the Serjeant at Arms shall . . . abscond from justice, . . . the order for commitment shall be renewed at the beginning of the next session of Parliament, and that this be declared to be a Standing Order of the House " (C. J. (1705-8) 376, 386).

(d) L. J. (1718-21) 189 ; C. J. (1711-14) 293 ; *ibid.* (1722-27) 549 ; *ibid.* (1732-37) 210.

It also appears that a contempt committed against one Parliament may be punished by another ; and libels against former Parliaments have often been punished (e). In the debate on the privilege of Sir R. Howard in 1625 Mr. Selden said : " It is clear that breach of privilege in one Parliament may be punished in another succeeding " (f).

## B. PROCEEDINGS IN CASE OF CONTEMPT

When the contempt is committed in the actual view of either House, as, for example, where a witness prevaricates, gives false evidence or refuses to answer, the House proceeds at once, without hearing the offender, unless by way of apology or to manifest his contrition, to punish him for his contempt. But, save sometimes where a contempt committed in the actual view of a committee is reported by the committee, neither House will punish a contempt committed out of such House or not in its actual view without hearing the party implicated in his defence.

Both Houses of Parliament have power to send for persons to answer charges of breach of privilege or contempts without specifying in the order for their attendance the object or the causes whereon their attendance is required. They have also power to send for supposed offenders in custody (g), and all civil officers and magistrates, and indeed all subjects of the King, are bound to assist, when required, in executing their warrants and orders.

Alleged breaches of privileges or contempts committed out of the House or in the precincts of the House but not in its actual view may be brought to the notice of the House (1) by a complaint from a Member, (2) by a communication or report from the Gentleman Usher of the Black Rod or his deputy or from the Serjeant at Arms, (3) by a petition, or (4) by a report from a committee. Generally speaking, a matter alleged to have arisen in a committee, but not reported by the committee, may not be brought to the attention of the House as a question of privilege.

Thus, on 16 July 1897, the Speaker refused to allow a motion to be made as a question of privilege for the attendance of a person who, it appeared from the minutes of the evidence taken before a committee, had refused to answer questions and to produce certain documents which he had been ordered to produce (Parl. Deb. (1897) 51, c. 311).

## PROCEEDINGS UPON COMPLAINTS BY MEMBERS OF BREACH OF PRIVILEGE

The proceedings when complaint is made by a Member of an alleged breach of privilege or other contempt of the House vary somewhat, first, according as the person implicated or supposed to be guilty is or is not a Member, and, secondly, according as the complaint is or is not founded upon a document. For the sake of clearness the course pursued when the

(e) C. J. (1547-1628) 925 ; *ibid.* (1640-42) 63 ; *ibid.* (1699-1702) 735.

(f) 1 Hatsell, 184.

(g) *Per Parke, B., in Gosset v. Howard* (1847), 10 Q. B. at p. 451. See precedents collected in Appendix to 2nd Report of the Select Committee appointed to inquire into the proceedings of the action of *Howard v. Gosset*, H. C. 397, p. 104 (1845).

person complained of is not a Member and the complaint is not founded upon a document will be first described ; next the procedure followed when a complaint against a person who is not a Member is founded upon a document ; then the procedure followed when a complaint is made against a Member ; and, lastly, the course of proceeding when the person complained of is a Member of the other House.

It is irregular to make a complaint unless the Member intends to follow it up with a substantive motion referring to the matter which he has introduced to the notice of the House ; nor does he amend the irregularity of his course of proceeding by moving the adjournment of the House (*h*). For methods and time of raising questions of privilege, see p. 354.

Frivolous complaints of breach of privilege are discouraged in the Lords by Standing Order No. LXXV (which prescribes that if a complaint is not allowed, the Lord who made the complaint must pay the fees and expenses of any person taken into custody as a result thereof) and by Standing Order No. LXXVI (which prescribes that complaints of breach of privilege must be made by oath or affidavit), and in the Commons by a resolution of 11th February, 1768 (which prescribes that if a complaint is adjudged groundless, costs and expenses may be awarded to the person complained of) (C. J. (1766-68) 602).

#### PROCEEDINGS UPON COMPLAINTS AGAINST STRANGERS

It was formerly the practice in both Houses when a complaint was made of a person who was not a Member, to order the person complained of to attend the House (*i*), and on his appearance at the bar, he was examined and dealt with according as the explanations of his conduct were satisfactory or otherwise ; or as the contrition expressed by him for his offence conciliated the displeasure of the House.

If the matter of the complaint is not disposed of at the time by the House in which it is raised, it is usually referred in each House to the Committee of Privileges.

*Committee of Privileges, Lords.*—The Committee for Privileges is appointed every session ; it consists of all Lords who have been or shall be present during the session (see S.O. No. LXXVII). Their Lordships or any of them, meet in the House of Lords, or in such place as the House may direct, when they please (S.O. No. LXXVIII), provided that three Peers, designated Lords of Appeal in the Appellate Jurisdiction Act, 1876, be always present.

To this Committee the House refers the consideration not only of questions as regards its orders, customs and privileges, but also Claims of Peerage and of Precedence, and Claims to vote for Representative Peers for Ireland and Scotland.

(*h*) Parl. Deb. (1841) 59, c. 507 ; *ibid.* (1859) 153, c. 244 ; *ibid.* (1900) 82, c. 1070.

(*i*) L. J. (1767-70) 180, 185, 204 (1768) ; *ibid.* 425 (1770) ; *ibid.* (1801-2) 58, 94 ; *ibid.* (1810-12) 332, 370 ; *ibid.* (1826-27) 199 ; *ibid.* (1828) 15 ; *ibid.* (1830-31) 285, 459 ; *ibid.* (1831-32) 385, 389 ; *ibid.* (1834) 704 ; *ibid.* (1841) 86 ; *ibid.* (1847-48) 842 ; *ibid.* (1850) 61 ; *ibid.* (1867) 31, Parl. Deb. (1867) 185, c. 452 ; C. J. (1819-20) 55 ; *ibid.* (1820) 436 ; *ibid.* (1821) 317 ; *ibid.* (1822) 414 ; *ibid.* (1827) 395 ; *ibid.* (1831-32) 278, 352 ; *ibid.* (1833) 606 ; *ibid.* (1835) 519 ; *ibid.* (1836) 658 ; *ibid.* (1837-38) 437 ; *ibid.* (1863) 80 ; *ibid.* (1875) 141 ; *ibid.* (1901) 414 ; but see resolutions C. J. (1693-97) 219 ; *ibid.* (1699-1702) 648.

*Committee of Privileges, Commons.*—Since 1909 it has been the usual practice in the Commons to refer the matter of the complaint to the Committee of Privileges (*j*), and the House suspends its judgment until their report has been presented.

It has been the practice of the House of Commons from an early date to appoint a Committee of Privileges at the beginning of every session (*k*). It is now customary to nominate the Committee at an early date in the session instead of waiting until some matter has been referred to its consideration (*l*). The number of Members is usually ten and the quorum is fixed at five. The Committee are given power to send for persons, papers and records.

**Consideration of Reports of Committees on Questions of Privilege and Procedure thereon.**—The report of a committee on a matter of privilege may be taken into consideration in pursuance either of an order made upon a previous day (*m*) or of a motion that the report be now read (*n*) or be now taken into consideration (*o*).

A motion expressing the agreement of the House with such a report has been made as a substantive motion (C. J. (1929-30) 503; *ibid.* (1933-34) 231; *ibid.* (1937-38) 351), but the more regular course is to move that the report be taken into consideration forthwith and, if this motion be agreed to, to make the motion upon consideration of the report.

A motion that the report of a committee on a matter of privilege be now taken into consideration or a substantive motion expressing the agreement or disagreement of the House with the report (*p*) will be accorded the priority assigned to a matter of privilege unless there has been undue delay in bringing it forward. A Member will not be held to have delayed unduly if he waits until the report of, and the minutes of the evidence taken before, the committee have been printed and circulated (*q*). When a report has been appointed for consideration on a future day, it will be given priority as a matter of privilege on the day so appointed (*r*).

*Procedure on reports which usually entail no further action.*—If the committee reports that no breach of the privileges of the House has been committed, no further proceedings are usually taken in reference to the report.

(*j*) C. J. (1909) 319; *ibid.* (1924) 180; *ibid.* (1926) 95; *ibid.* (1932-33) 126; *ibid.* (1933-34) 151; *ibid.* (1937-38) 323. Before that date it was only if there were any special circumstances arising out of a complaint of breach of privilege that the matter was referred to the examination of a committee, and it was more usual to appoint a select committee to inquire into the question than to refer it to the Committee of Privileges, see C. J. (1854) 40; *ibid.* (1857-58) 68, 77; *ibid.* (1865) 157; *ibid.* (1874) 28, 61, 71; *ibid.* (1888) 484; *ibid.* (1902) 311.

(*k*) The appointment of the Committee was discontinued in 1833, but was revived in 1837 and has been continued since that year.

(*l*) During the period comprising the years 1841 to 1903 inclusive it was not the practice to nominate the Committee unless some matter had arisen which had been referred to its consideration.

(*m*) C. J. (1851) 265; *ibid.* (1865) 223, 311; *ibid.* (1878-79) 350; *ibid.* (1887) 293; *ibid.* (1888) 510; *ibid.* (1889) 346.

(*n*) C. J. (1826-27) 561; *ibid.* (1839) 278; *ibid.* (1843) 523.

(*o*) C. J. (1938-39) 38.

(*p*) Notices of Motions, 1929-30, p. 4643; *ibid.* 1933-34, p. 2005.

(*q*) Parl. Deb. (1892) 3, c. 597.

(*r*) Parl. Deb. (1888) 331, c. 1614; *ibid.* (1889) 338, c. 1089.

In two instances, however, where the Committee of Privileges reported that no breach of the privileges of the House had been committed, the House resolved that it agreed with the Committee in their report (C. J. (1766-68) 541; *ibid.* (1933-34) 231).

Where the committee recommended that, in view of the explanation offered by the offender, and of his expression of regret for the offence he had committed, the House should take no further action in the matter, (H. C. 153, p. iii (1911); C. J. (1926) 99; *ibid.* (1932-33) 141), or that the conduct complained of was not such a breach of the privileges of the House as called for any further action on its part (H. C. 281, p. iii (1909)), or that, in the opinion of the committee, the House would best consult its own dignity by taking no further notice of the libel (H. C. 98, p. iii (1924)), further action was not taken by the House.

*Procedure on reports entailing further action.*—If the committee report that a serious breach of privilege has been committed, the House usually proceeds to consider the kind or degree of punishment which it would be proper to inflict on the offender (s) (see p. 89).

Where a committee reported that the act complained of constituted a breach of the privileges of the House, the House agreed to the resolution and ordered the persons named by the committee as concerned in the breach to attend the House on a future day (C. J. (1819-20) 243, 244).

In some cases the House, after agreeing to the report, has then proceeded to adjudge the offender guilty of a breach of privileges or of a contempt (C. J. (1835) 501; *ibid.* (1843) 523; *ibid.* (1851) 288; *ibid.* (1929-30) 503). This step, however, is unnecessary in cases where the committee has reported that, in its opinion, the person implicated has been guilty of a breach of the privileges of the House, or of an offence which amounts on the face of it to a breach of privilege.

In one case the House, after agreeing to the report, ordered the incriminated party to be taken into the custody of the Serjeant, and, when that officer reported that he had been taken into custody, adjudged him guilty of a breach of privilege and committed him to Newgate (C. J. (1818) 282, 289).

Where, after the House had made an order for the attendance of the parties incriminated by a report, a petition was presented to the House from the offenders acknowledging their offence and expressing their contrition for the same and entreating the House to dispense with their attendance on the House and accept their submission and apology, the House resolved that in consideration of the petitioners having acknowledged their offence and expressed their contrition for the same, the House was content to proceed no further in the matter, and the order for their attendance was discharged (C. J. (1819) 286).

In some cases the House, on taking the report of a committee into consideration, has adjudged the person incriminated guilty of a contempt or a breach of the privileges of the House, without first resolving that it agreed with the committee in their report (C. J. (1825) 445; *ibid.* (1826-28) 561; *ibid.* (1865) 336; *ibid.* (1887) 306). But it is more regular for the House to agree to the report of the committee before proceeding to act on it (Parl. Deb. (1835) 29, c. 1250-51).

Where the House has acted upon the report of a committee as to the establishment of the offence, and adjudged the party incriminated by the report guilty of a breach of the privileges of the House, it has sometimes ordered him to be taken into the custody of the Serjeant in order to his

(s) C. J. (1843) 523; *ibid.* (1851) 288.

being brought to the bar, and when that officer has acquainted the House that he has taken the offender into his custody, he has been ordered to be brought to the bar and heard in extenuation of his offence and in mitigation of the penalty to be imposed (t).

Sometimes the House on taking the report into consideration orders the person incriminated to attend the House in order to hear anything he may have to offer in extenuation or palliation of his offence, or in mitigation of punishment before it decides whether or not it will confirm the decision of the committee (C. J. (1765-66) 843; *ibid.* (1839) 278; *ibid.* (1878-79) 363). If he fails to attend, he will be ordered into custody forthwith (C. J. (1878-79) 366); if he attends, he will be heard and then dealt with as the House thinks proper (C. J. (1839) 278; *ibid.* (1878-79) 366).

#### COMPLAINTS FOUNDED UPON DOCUMENTS

When complaint is made of something published in a newspaper or book, a copy of the newspaper or book, and when complaint is made of a letter sent to a Member, the original of the letter said to have been written (u), must be delivered in at the table by the Member who makes the complaint and the passages complained of read aloud by the Clerk for the information of the House before any further proceedings are had in relation to the complaint (a).

When it appeared that a Member who was complaining of the manner in which a speech of his was reported in a newspaper had no copy of the newspaper on which to found his complaint, he was stopped by the Speaker.

When complaint is made of an article in a newspaper the newspaper containing the article, not an extract therefrom pasted upon paper, must be delivered in at the table (Parl. Deb. (1878) 239, c. 536).

Although the usual course is for the paper complained of to be read by the Clerk, the Member who makes the complaint may read it himself, if he pleases, as part of his speech, in which event the paper when delivered in may be entered in the Votes as read (Parl. Reg. i, 476 (1802)).

Where complaint was made of a series of articles in several newspapers, the Speaker said that if he called upon the Clerk to read all the articles, he should be trifling with the House, and that he should therefore take leave to depart from the ordinary course (C. J. (1880) 57).

A Member who complains of something published in a newspaper ought regularly to conclude by moving that the passage or passages complained of be read by the Clerk at the table (b), but in recent years the Speaker has not insisted upon the observance of this formality. When the Member has concluded his complaint the Speaker desires him to bring the document to the table and, when the document has been brought to the table, directs the Clerk of the House to read the passages complained of.

When the document or the particular passages complained of have been read, it is the duty of the Member who has brought the matter under

(t) C. J. (1825) 445, 455; *ibid.* (1826-28) 561, 577, 581.

(u) Parl. Deb. (1876) 229, c. 1671.

(a) Parl. Deb. (1844) 74, cc. 286-88; *ibid.* (1859) 154, c. 445; *ibid.* (1878) 239, c. 535; *ibid.* (1881) 261, c. 1670; *ibid.* (1888) 329, c. 49; *ibid.* (1890) 343, c. 183; *ibid.* (1893) 9, c. 1867; *ibid.* (1896) 38, c. 1177; *ibid.* (1901) 98, c. 583.

(b) 32 Parl. Hist. 609 (1795); 1 Parl. Reg. 476 (1802); Parl. Deb. (1841) 59, c. 507.

the notice of the House to follow up his complaint with a motion (c). Where he is not prepared to do so, the House has proceeded to the orders of the day (d). It would be irregular for a Member to deliver in a paper to be read at the table without any intention of making a motion in reference thereto (e).

The reading of an article in a newspaper does not commit the House to any proceedings against the printer or publisher unless upon the reading it is determined that the article contains matter which the House, having noticed, is bound, in vindication of its privileges, to visit with its displeasure or punishment (f).

When complaint is made of an alleged libel on the House or on a committee or a member of the House, it is usual, after the document upon which the complaint is founded has been read by the Clerk, for the House, before taking any further steps in the matter, to determine whether the document complained of is of the particular character alleged (g). The reason for this is that unless the writing is defamatory it does not call for any action on the part of the House.

It is therefore customary, after the document has been delivered in at the Table and the passages complained of have been read by the Clerk, for the Member who makes the complaint to make a motion expressive of the character which, in his opinion, belongs to the publication he has brought before the House (17 Parl. Hist. 1015-16; 28 *ibid.* 169, 845; Parl. Deb. (1841) 59, c. 507; *ibid.* (1863) 169, c. 801; C. J. (1900) 178; *ibid.* (1901) 355, 414; *ibid.* (1907) 327; *ibid.* (1911) 34, 37; *ibid.* (1924) 180; *ibid.* (1928-29) 50; *ibid.* (1935-36) 203).

A similar course was followed where complaint was made of a letter addressed to a Member reflecting on a speech made by him in the House as false and libellous (C. J. (1863) 80; Parl. Deb. (1863) 169, c. 801); and where a Member complained of a letter which he, in common with many, if not all, the members of the House, had received enclosing a questionnaire asking his views on five questions relating to what are sometimes called blood sports and concluding: "If we do not hear from you we shall feel justified in letting your constituents know that you have no objection to cruel sports" (C. J. (1934-35) 201); where complaint was made of a letter to a Member threatening him with a parliamentary inquiry unless he bestowed a certain office which was in his gift on the writer's son, and the letter having been delivered in and read (Parl. Deb. (1819) 39, c. 638; C. J. (1819) 159-60), and where complaint was made of a printed paper as containing a gross misrepresentation of the proceedings of the House (C. J. (1765-66) 839).

But it is otherwise when a complaint is made in respect of the publica-

(c) Parl. Deb. (1874) 219, c. 395; *ibid.* (1875) 222, c. 325; *ibid.* (1876) 229, c. 1671.

(d) C. J. (1874) 161, Parl. Deb. (1874) 219, cc. 395-96.

(e) Parl. Deb. (1900) 82, c. 1070.

(f) Parl. Deb. (1834) 21, c. 152.

(g) L. J. (1796-98) 506 (1798); *ibid.* (1798-1800) 177 (1799); *ibid.* (1798-1800) 638 (1800); *ibid.* (1834) 704; 17 Parl. Hist. 1015-16; 28 *ibid.* 169, 846; Parl. Deb. (1817) 36, cc. 113, 114; C. J. (1787-88) 212, 232; *ibid.* (1788-89) 463; *ibid.* (1790) 508; *ibid.* (1792-93) 925; *ibid.* (1795-96) 119; *ibid.* (1801-02) 116; *ibid.* (1810) 252; *ibid.* (1819-20) 57; *ibid.* (1821) 317; *ibid.* (1831) 414; *ibid.* (1873) 136; *ibid.* (1878-79) 66; *ibid.* (1888) 385; *ibid.* (1890) 7; *ibid.* (1893-94) 631; *ibid.* (1900) 178; *ibid.* (1901) 355, 414; *ibid.* (1911) 36; *ibid.* (1921) 393; *ibid.* (1928-29) 50, 156, 159; *ibid.* (1935-36) 203; *ibid.* (1937-38) 213.



tion of the debates or proceedings of the House or any committee thereof, (see p. 117).

In some instances the House, instead of coming to a resolution that the paper complained of is a false or a scandalous libel, has voted it to be a breach of the privileges of the House (*h*), but the former is the more regular course since it is not the article or the letter, but the publication or the writing and sending thereof, which constitutes the offence, and, secondly, because the sense of the House as to the nature of the document is more accurately marked by the words "false (or scandalous) libel on the House (or on a member of the House)" or some similar expression than by general words.

It is not in order on the question for declaring a writing complained of to be a libel to adduce quotations from other publications which have not formed the subject of a complaint, and to state that they contain libels of a grosser nature than the one complained of, though it is open to a Member to state that certain expressions contained in publications which he can produce are stronger than those which have been brought under the consideration of the House, and to go on to prove that these stronger expressions do not constitute a libel, and, consequently, that the weaker are not libellous (Parl. Deb. (1819-20) 41, cc. 1024, 1025).

When a pamphlet of which complaint was made had been delivered in at the table and its title read, the matter of the complaint was ordered to be taken into consideration the following day in order to give Members time to make themselves acquainted with the contents of the pamphlet before they voted (27 Parl. Hist. 6; C. J. (1787-88) 230).

In another instance where the debate upon a motion declaring that the publication of a certain article in a newspaper constituted a breach of privilege was adjourned, the article complained of was, by the Speaker's direction, circulated with the Votes (Parl. Deb. (1887) 314, c. 758).

It has been objected that to adjudge that the offence has been committed before hearing the accused party is a very serious deviation from the common course of criminal justice (F. Hargrave, *Jurisconsult Exercitations* i, 278-79). As, however, the question whether the writing is defamatory can, in most cases, be determined from the terms of the document without recourse to extrinsic evidence, and as the falsity of the libel is not an essential element of the offence, if the defamatory character of the writing is apparent on its face, no explanation which might be offered could alter the decision of the House on that point, though it might materially influence the House in deciding what punishment, if any, to inflict upon the parties responsible for the publication. Moreover, it is only in cases where the words which form the subject of the complaint are too grossly libellous to admit of any satisfactory explanation that this course is followed. In cases of a different kind which give scope for argument the House will postpone coming to a decision on the point until the party responsible for the publication of the libel has been afforded an opportunity of being heard (L. J. (1767-70) 204 (1768); *ibid.* (1790-93) 314 (1792); *ibid.* (1810-12) 332 (1811); *ibid.* (1830-31) 285, 459 (1831); *ibid.* (1867) 31 (1867); C. J. (1805-6) 214; *ibid.* (1810) 105; *ibid.* (1819-20) 55; *ibid.* (1831-32) 278; *ibid.* (1837-38) 437; *ibid.* (1857-58) 189, or refer the matter of the complaint to the consideration of a committee (L. J. (1867) 31 (1867); C. J. (1854) 40; *ibid.* (1924) 180; *ibid.* (1926) 95, 99).

(*h*) L. J. (1834) 704; C. J. (1821) 28; *ibid.* (1822) 414; *ibid.* (1863) 80; *ibid.* (1881) 272; *ibid.* (1893-94) 66, 416; *ibid.* (1900) 178; *ibid.* (1901) 355, 414; *ibid.* (1934-35) 201.

Thus, where complaint was made of an article in a newspaper imputing corruption to the Irish Members, the House, on the motion of the Member who preferred the complaint, referred the matter of the complaint to the examination of a select committee in order to give the parties who had made the charges an opportunity of substantiating them and to enable the Members against whom the charges were directed to prove that they were unfounded (C. J. (1854) 40; Parl. Deb. (1854) 130, c. 323).

A motion declaring that a paper of which complaint had been made was a libel or that its publication constituted a breach of the privileges of the House has been set aside by the previous question or by an amendment that the House do proceed to the orders of the day (*i*), or by an amendment that the matter of the complaint be referred to a committee (*j*) or by an amendment that the House declines to treat the publication of the article complained of as a breach of its privileges (*k*).

If it is decided that the paper is a libel, or that the writing and sending of the letter is a breach of privilege, the printer and the publisher of the libel (or the author, if the identity of the author is known), or the writer of the letter, as the case may be, may be ordered to attend the House (*l*), or a committee may be appointed to inquire who are the parties concerned in the publication of the libel (*m*). If the House determines in the negative it proceeds no further in the business (*n*).

Where the House has resolved that a paper of which complaint has been made is a libel, a motion that the author has been guilty of a high breach of the privileges of the House is either nugatory or unnecessary, unless it is intended to follow up the motion with some other question or to ground some other proceeding upon it, because the sense of the House cannot be more strongly marked as to the nature of the paper complained of than by the words of the motion which has already been carried (28 Parl. Hist. 860).

When a motion is made for the attendance of the printer, the publisher or the editor of a newspaper of which complaint has been made, the name of the person whose attendance is required must be specified in the motion. A motion for the attendance of "the editor" or "the proprietor" of such and such a paper would be out of order. Unless some Member can furnish the House with the name of the editor, the only course is to order the printer (whose name is known) to attend, and to obtain from him the name of the editor (Parl. Deb. (1819-20) 40, c. 1147; *ibid.* (1849) 104, c. 1056). In 1901, however, the editor and publisher of a newspaper of which complaint had been made were ordered to attend at the bar of the House (C. J. (1901) 414). On another occasion a Member was permitted to move that the editor and publisher of a newspaper do attend the House, though the motion was negatived (C. J. (1901) 355).

In some instances the House has contented itself with adjudging the paper complained of a libel, without taking any further action (*o*).

(*i*) C. J. (1831) 414; *ibid.* (1878) 196; *ibid.* (1880) 57; *ibid.* (1893-94) 631; *ibid.* (1907) 327.

(*j*) C. J. (1924) 180; *ibid.* (1929-30) 489.

(*k*) C. J. (1887) 218; *ibid.* (1890) 7.

(*l*) C. J. (1821) 317; *ibid.* (1822) 414; *ibid.* (1863) 80; *ibid.* (1901) 414.

(*m*) C. J. (1699-1702) 230; *ibid.* (1745-50) 141; *ibid.* (1765-66) 839; *ibid.* (1795-96) 119.

(*n*) Parl. Deb. (1817) 36, cc. 113, 114.

(*o*) C. J. (1881) 272; *ibid.* (1893-94) 66; *ibid.* (1900) 179; *ibid.* (1901) 355; *ibid.* 1928-29) 50; *ibid.* (1937-38) 213. Cf. *ibid.* (1934-35) 201.

Mr. Pitt, however, expressed the opinion that when the House had voted a paper to be a libel it ought not, with any regard to the consistency of its proceedings, to let the matter stop there, but was bound to follow it up with something which would serve to mark its disapprobation of such publications, and to hold out a lesson for the future (28 Parl. Hist. 861-62).

If the House does not deem it proper to notice the libel complained of, it has been said that the better course is to set aside the motion for declaring the alleged libel to be such by the previous question or by an amendment that the House do proceed to the orders of the day (Parl. Deb. (1875) 223, c. 810). For instances, where this course has been followed, see C. J. (1831) 414; *ibid.* (1878) 196; *ibid.* (1880) 57; *ibid.* (1893-94) 631; *ibid.* (1907) 327.

Where complaints have been made that, according to a report in a newspaper, defamatory statements concerning the House or some Member have been made at a meeting, public or other, or that threats have been uttered against a Member, the House has sometimes resolved that the words or other act reported to have been spoken or done constitute a breach of the privileges of the House. Thus, in one instance, the proceedings of a board of guardians as reported in a newspaper were adjudged a breach of privilege (*p*). But it may be doubted whether it is entirely consistent with the general practice of the House or with natural justice for the House on the strength of a report in a newspaper, and without hearing the accused party, to declare that the offence has been committed.

#### HEARING OF COUNSEL IN CASES OF BREACH OF PRIVILEGE AND CONTEMPT

Persons accused of breaches of the privileges or of other contempts of either House are not, as a rule, allowed to be defended by counsel (*g*); but in a few cases incriminated persons have been allowed to be heard by counsel (*r*) the hearing being sometimes limited to "such points as do not controvert the privileges of the House" (*s*). Where a person has been allowed to make his defence by counsel, counsel have sometimes been heard in support of the charge (*t*); and where a complaint of an alleged breach of privilege was referred to the Committee of Privileges, counsel were allowed, by leave of the House, to examine witnesses before the Committee on behalf of both the Member who had made the complaint and the parties named therein (*u*).

#### COMPLAINTS AGAINST MEMBERS

Before making a complaint against a Member it is the practice, as a matter of courtesy, to give him notice beforehand (*a*).

If a Member who makes a complaint against another Member has failed or been unable to give the Member notice of his intention to do

(*p*) C. J. (1898) 381.

(*q*) 2 Cav. Deb. 428, 431; Hargrave, Jurisconsult Exercitations, i, 278.

(*r*) C. J. (1750-54) 27; *ibid.* (1766-68) 625; *ibid.* (1770-72) 275, 279, 280.

(*s*) C. J. (1770-72) 275, 280.

(*t*) C. J. (1750-54) 27; *ibid.* (1766-68) 625.

(*u*) C. J. (1766-68) 540.

(*a*) 28 Parl. Hist. 826; Parl. Deb. (1844) 74, c. 139; *ibid.* (1875) 222, c. 1185; *ibid.* (1877) 236, cc. 542-43; H. C. Deb. (1924) 173, c. 1349; *ibid.* (1929-30) 242, c. 42.

so, or if although the latter has been given notice he neglects to attend, the more regular course is to adjourn further consideration of the matter of the complaint to a future day and to order the Member whose conduct is impugned to attend the House in his place on that day (*b*).

In some cases, however, a Member has been permitted to found a motion upon his complaint and the debate on this motion has been adjourned to a later day in order that the Member complained of might be present to hear the charge (C. J. (1887) 377; *ibid.* (1926) 338; *ibid.* (1928-29) 156; *ibid.* (1929-30) 477; H. C. Deb. (1911) 21, cc. 1439 *et seq.*). Sometimes the Member has been ordered to attend in his place on the day to which the debate has been adjourned (C. J. (1887) 377).

In several instances where a Member has stated that he rose to complain of the conduct of another Member, the Speaker has suggested that as the Member concerned was not in his place, the making of the complaint should be deferred until the following sitting (Parl. Deb. (1907) 178, c. 198).

If a Member who has been ordered to attend in his place neglects to do so, and the Serjeant at Arms informs the House that a copy of the order has been duly served upon the Member, he may be ordered to be taken into the custody of the Serjeant or even expelled (*c*). But it is more usual to make an order for his attendance on another day (*d*) and not to have recourse to either of these measures until it is clear that the Member is setting the House at defiance. If the Serjeant has been unable to give the Member notice of the order (*e*) or the Member has written to the Speaker stating that he is unable, through indisposition to attend (*f*), the House will fix another day for his attendance. In the latter instance the order for the Member's attendance may be conditional on his health permitting (*g*).

The same course was followed where, though the Member himself had not communicated with the Speaker, representation was made to the House by another Member that he was unable to attend owing to the state of his health (C. J. (1761-64) 709).

Where a Member who has been ordered to attend in his place to answer a charge has absconded, the House has sometimes proceeded with the investigation of the matter (C. J. (1731-32) 810, 876; *ibid.* (1761-64) 722).

Where the Member complained of is present when the complaint is made, or attends pursuant to the order of the House, it is the rule that he should be heard in explanation or exculpation as soon as the question on the motion founded upon the complaint is proposed from the chair, and then withdraw (*h*), unless the complaint is founded upon a written paper or other document, in which event the Member complained of should be heard as soon as the paper on which the complaint is founded has been delivered in at the table and read, and before the question founded upon the complaint is proposed from the chair. The principle

(*b*) C. J. (1770-72) 264; *ibid.* (1883) 232; *ibid.* (1940-41) 84, 86. See also H. C. Deb. (1941-2) 379, c. 1216 and 1414; *ibid.* (1943-44) 400, c. 439 and 584.

(*c*) C. J. (1667-87) 85.

(*d*) C. J. (1697-99) 643, 645.

(*e*) C. J. (1782-4) 739; *ibid.* (1810) 295. Cf. *ibid.* (1813-14) 427.

(*f*) C. J. (1697-99) 661; *ibid.* (1770-72) 279.

(*g*) C. J. (1770-72) 279.

(*h*) H. C. Deb. (1911) 21, cc. 1436, 1561; *ibid.* (1929-30) 242, c. 313.

underlying this distinction is that all the Member complained of is entitled to know is the substance of the charge against him, and that where the complaint is founded on a document the Member knows to what points he is to direct his exculpation (i). If the Member does not withdraw, of his own accord, the Speaker will direct him to do so.

Where, however, a Member, on being reminded by Mr. Speaker that in accordance with the rules of the House he should withdraw, submitted that he had probably not heard all the charges which might be made against him, and expressed a desire to remain in his place, Mr. Speaker took the pleasure of the House and the Member was not required to withdraw (C. J. (1883) 280; Parl. Deb. (1883) 280, c. 812).

In one instance after a Member in explanation of his conduct had been heard and had withdrawn, the Member who had made the complaint rose to make observations on his explanation. The Member was, with the assent of the House, allowed to return to his place and to remain while the Member who had made the complaint and other Members made statements relating to the matter of the complaint (C. J. (1887) 389; Parl. Deb. (1887) 317, cc. 1633-38).

When doubt was expressed in the debate as to the purport of the explanation tendered to the House by the Member complained of, he was, with the assent of the House, recalled and submitted a further explanation to the House, after which he again withdrew (C. J. (1893-94) 631).

On the order of the day being read for resuming the consideration of a Member's conduct he was, with the assent of the House, recalled and permitted to make a further explanation upon representation made to the House by another Member that the Member whose conduct had been impugned desired to be allowed to explain more particularly what he had offered when he had been heard in his defence (C. J. (1790) 516), or to make a further statement to the House (C. J. (1911) 37; H. C. Deb. (1911) 21, c. 1553), after which he again withdrew.

In other respects the proceedings do not differ essentially from the proceedings where the person complained of is not a Member of the House.

For complaints of alleged disclosure by Members of proceedings in secret session, see C. J. (1941-42) 96 and 98.

Where the matter of complaint is a charge alleged to have been made by one Member against another in a speech outside the House, it is usual, if the Member admits the correctness of the report, and states that he is in a position to prove the charge and is willing to attempt to do so, to give him an opportunity of establishing his charge and with this object to refer the matter to a committee (C. J. (1834) 12, 17, 30; Parl. Deb. (1844) 74, cc. 237-38; C. J. (1929-30) 489). In *Dr. Salter's Case*, however, the House declined to follow this course, see C. J. (1926) 340; H. C. Deb. (1926) 199, cc. 719-28.)

Where the Member has refused either to withdraw the charges or to substantiate them, the House has sometimes adjudged him guilty of a breach of privilege, and dealt with him accordingly. In *Mr. Ferrand's Case*, however, the House, on Sir Robert Peel's advice, contented itself with resolving that the imputations conveyed in the expressions complained of were wholly unfounded and calumnious, and did not affect the honour and character of

(i) 28 Parl. Hist. 833; Parl. Deb. (1810) 16, cc. 179, 180-81, 184-85; *ibid.* (1838) 41, cc. 104-5; 2 Hatsell, 171-72.

the members to whom they referred (C. J. (1844) 239; Parl. Deb. (1844) 74, c. 303).

Where the Member accused has made a proper apology for his offence the incriminating motion has usually been withdrawn (*j*), and where the Member who made the complaint has not withdrawn his motion, it has been set aside by the previous question (*k*), or by an amendment that the House should proceed to the business appointed for that sitting (*l*).

In two instances, however, the House condemned the Member's conduct as a breach of its privileges, but resolved that in consequence of the full and ample apology he had offered to the House, or that having regard to his withdrawal of the expressions complained of, it would not proceed any further in the matter (C. J. (1845) 589; *ibid.* (1880) 54).

A Member not yet adjudged guilty of contempt may return to his place when debate on his conduct has been adjourned (*m*), but it is otherwise if he has been adjudged guilty, even though debate on the question of the punishment to be inflicted on him has been adjourned (*n*).

A request, made through another Member, that a Member who had been adjudged guilty of a contempt, but whose punishment had not been determined upon, might be heard in his place has not been acceded to (Parl. Deb. (1845) 85, c. 1291).

After the House had resolved that a letter written by a Member reflecting on the Speaker's conduct was a breach of privilege, the Member was, on the Speaker's suggestion, recalled to afford him an opportunity of making an apology to the House (C. J. 1893-94) 417).

#### COMPLAINTS AGAINST MEMBERS OR OFFICERS OF THE OTHER HOUSE

The leading principle which appears to pervade all the proceedings between the Houses of Parliament is that there shall subsist a perfect equality between them, and that they shall be, in every respect, totally independent one of the other. Hence it is that neither House can claim, much less exercise, any authority over a member of the other (*o*). Neither House of Parliament can take upon itself to punish any breach of privilege or contempt offered to it by any member of the other House. If any complaint is made against any individual Member or against any of the officers of the other House the usual mode of proceeding is to examine into the fact and then lay a state of that evidence before the House of which the person complained of is a Member or officer (*p*).

When a member, officer, or servant of either House has been guilty of any offence either against the other House or against its members, which would be punishable by the latter if committed by one of its own members, officers, or servants, it is the duty of the House to which such

(*j*) C. J. (1873) 61; *ibid.* (1875) 46; *ibid.* (1887) 377; *ibid.* (1911) 36-37; *ibid.* (1921) 393; *ibid.* (1928-29) 159; *ibid.* (1935-36) 203.

(*k*) C. J. (1893-94) 631.

(*l*) C. J. (1884) 167; *ibid.* (1907) 328.

(*m*) Parl. Deb. (1877) 1815, 1833.

(*n*) Parl. Deb. (1846) 85, c. 1198.

(*o*) 2 Hatsell, 67.

(*p*) 2 Hatsell, 71. A different course was pursued where the subject of the complaint was the interference of Peers in the election of Members to serve in Parliament for reasons explained in 2 Hatsell, 72 *n*.

offender belongs, upon being apprised of the fact, to take proper measures to inquire into and punish the offence in a proper manner.

### PROCEDURE WHERE BREACHES OF PRIVILEGE OR OTHER CONTEMPTS ARE REPORTED BY COMMITTEES

In both Houses special reports from committees with reference to disorderly conduct therein, or to some contempt of the committee's authority, as where a person summoned as a witness refuses to attend or to answer questions, or prevaricates or gives false evidence, or reports which raise a presumption that a breach of privilege or other contempt of the House has been committed were formerly taken into consideration on presentation (*q*) or appointed for consideration on a future day by a motion made on the presentation of the report (*r*). In the Lords it is usual when a report of this description is appointed for consideration on a future day to order the Lords to be summoned. When a report from a committee directing the attention of the House to what is *prima facie* a breach of privilege has been appointed for consideration on a day named, it is given precedence on the day so appointed over any other business appointed for that sitting.

According to present usage in the Commons, however, reports from select committees when presented are ordered as of course to lie upon the table. Thereafter the procedure upon such reports is the same as that upon reports from the Committee of Privileges (see p. 134). Any Member may bring a report of this description before the House, but it is usual to leave this duty to the chairman of the committee (*s*).

Upon consideration of the report, the parties implicated may be ordered to attend the House (*t*), or the report may be referred to the consideration of a select committee (*u*), or referred back to the committee with an instruction to inquire into the circumstances of the case (*a*).

Where, however, it is manifest that an offence has been committed, and the offence is of such a nature that no explanation the offender might offer could extenuate it, as, for example, where a committee reports that a witness has been guilty of prevarication, or has given false evidence, or refused to answer questions (*b*), or that a person summoned as a witness has evaded all attempts to secure his attendance before the committee (*c*), or that it appears, on evidence taken before the committee that certain persons have prevented the attendance of a person summoned as a witness, and have given him money to induce him to abstain from giving

(*q*) L. J. (1810-12) 371 (1811); *ibid.* L. J. (1845) 545 (1845); *ibid.* (1870) 77; C. J. (1874) 182; *ibid.* (1887) 203.

(*r*) L. J. (1798-1800) 638 (1800); *ibid.* (1862) 300.

(*s*) Parl. Deb. (1892) 3, c. 598.

(*t*) L. J. (1798-1800) 639 (1800); *ibid.* (1862) 321; C. J. (1836) 464; *ibid.* (1842) 131; *ibid.* (1874) 182; *ibid.* (1892) 157.

(*u*) C. J. (1835) 421; *ibid.* (1878-79) 327; *ibid.* (1889) 332.

(*a*) C. J. (1887) 203.

(*b*) L. J. (1870) 77; C. J. (1809) 70; *ibid.* (1827) 473; *ibid.* (1848) 258; *ibid.* (1857) 354.

(*c*) C. J. (1851) 147-48.

evidence before the committee (*d*), the House may proceed at once, without hearing the offender, to punish him for his contempt.

Where a committee on a group of private bills reported that a Member, who had been ordered by the House to attend the committee, had not attended it, the House, after hearing the Member, adjudged him guilty of a contempt and committed him to the custody of the Serjeant (C. J. (1846) 582, 603).

Upon consideration of a special report from a committee on a private bill respecting the forgery of signatures to a petition against the bill, the House on taking the special report into consideration, resolved that a breach of privilege had been committed, and that the parties by whom the petition had been prepared were liable to be dealt with by the House in respect thereof, but that in the circumstances it was not necessary to proceed further in the matter (C. J. (1878-79) 176).

### PROCEDURE ON PETITIONS COMPLAINING OF MATTERS AFFECTING THE PRIVILEGES OF THE HOUSE

A petition complaining of a matter which affects the privileges of the House may be taken into consideration on the presentation thereof (*e*). If the matter does not demand the immediate interposition of the House the course is to appoint by order that the petition be taken into consideration on a future day and be printed for the information of the House (*f*). Such a motion may be made at once without notice (*g*).

Where a petition has been appointed for consideration on a future day the persons complained of have been ordered to attend the House that day (C. J. (1840) 5).

Where, after a petition had been appointed for consideration on a certain day, a petition was presented from the person whose conduct had been impugned denying the statements contained in the first petition, the second petition was ordered to be taken into consideration at the same time and to be printed (C. J. (1851) 199).

A petition which has been ordered to lie upon the table may subsequently be brought under the consideration of the House (C. J. (1826-27) 318; *ibid.* (1843) 411; Parl. Deb. (1843) 70, c. 89; C. J. (1847) 119) or referred to the Committee of Privileges (C. J. (1847-48) 676) on motion after notice. In the Lords a Peer has called the attention of the House to a petition which had been presented and ordered to lie upon the table and moved that the persons complained of be ordered to attend the House (Parl. Deb. (1850) 112, c. 1422), and in the Commons a select committee has been appointed on motion after notice to inquire into the allegations of a petition which had been ordered to lie upon the table (C. J. (1845) 649; *ibid.* (1846) 731, 787; *ibid.* (1847-48) 511; *ibid.* (1851) 367).

When a petition complaining of a breach of privilege is taken into consideration, whether on presentation or on a subsequent day, the

(*d*) C. J. (1851) 147-48.

(*e*) L. J. (1787-90) 249-50 (1788); *ibid.* (1845) 690; *ibid.* (1850) 262; *ibid.* (1852) 283; *ibid.* (1860) 75; C. J. (1819) 159; *ibid.* (1819-20) 231; *ibid.* (1825) 304; *ibid.* (1826-27) 345; *ibid.* (1837) 77; *ibid.* (1837-38) 271; *ibid.* (1840) 29-30; *ibid.* (1857) 231; *ibid.* (1857-58) 68; *ibid.* (1859) 357.

(*f*) Parl. Deb. (1846) 86, c. 328; C. J. (1836) 24; *ibid.* (1839) 205, 499; *ibid.* (1840) 4, 81, 168; *ibid.* (1845) 673; *ibid.* (1851) 193; *ibid.* (1864) 173.

(*g*) Parl. Deb. (1861) 164, c. 1168.



proceedings are similar to those which take place when complaint is made by a Member. The party complained of either alone (*h*), or together with the petitioner (*i*), may be ordered to attend the House; or the petition may be referred to the Committee of Privileges (*j*), or to a select committee (*k*), or a select committee may be appointed to search for precedents (*l*).

If the petitioner is in attendance he may be called in and examined at the bar in relation to the matter complained of in his petition, before any other action is taken (*m*).

When a petition is to be presented containing matter of charge against a Member or impugning in any manner his character or conduct, it is necessary that the Member should receive notice beforehand of the time when the petition is presented in order that he may then be in attendance in his place, and have an opportunity of vindicating himself, if he thinks fit, against the attack upon him at the time when the charge is made. If a petition of this kind is offered without such notice having been previously given, it will not be received (*n*). It is therefore usual for a Member who intends to present a petition of this description to give the Member whose character or conduct is impugned by the petition, notice of the day on which he intends to present the petition (*o*). If he is unable to do so, or if, although he has given the Member notice, the latter neglects to attend, the proper course is to move the House to order him to attend in his place on some succeeding day, and to defer presenting the petition until the Member attends in pursuance of the order (*p*).

If the Member is present, it would seem that the petition may be presented even though he has not been given notice that it is intended to present it (*q*).

When a petition is presented impugning the conduct of a Member, it is usual to ask him whether he objects to the petition being printed before he has had an opportunity of explanation (Parl. Deb. (1845) 81, c. 1304).

When a petition complaining of the conduct of a Member is presented, the Member is heard, if he thinks fit, after the petition has been read and then withdraws before any motion is made in relation thereto (*r*).

A petitioner, who alleged that a Member against whose return he had petitioned had tampered with certain persons whom he had intended to examine, and who would be material witnesses upon the trial of the petitioner, and had attempted to dissuade and to deter and hinder them from giving

(*h*) L. J. (1787-90) 249-50 (1788); *ibid.* (1852) 285; *ibid.* (1860) 75; C. J. (1837-38) 271; *ibid.* (1840) 5, 30, 93; *ibid.* (1845) 680; *ibid.* (1857) 231.

(*i*) C. J. (1826-27) 345.

(*j*) C. J. (1819-20) 231; *ibid.* (1847-48) 129, 676.

(*k*) L. J. (1850) 262; *ibid.* (1852) 283; C. J. (1825) 304; *ibid.* (1826-27) 318; *ibid.* (1836) 42; *ibid.* (1837) 77; *ibid.* (1839) 210; *ibid.* (1843) 411, 487; *ibid.* (1851) 204; *ibid.* (1857-58) 68.

(*l*) L. J. (1845) 690.

(*m*) L. J. (1787-90) 294-50 (1788); C. J. (1826-27) 345; *ibid.* (1857) 231.

(*n*) Parl. Deb. (1826-27) 16, c. 151; *ibid.* (1837) 36, c. 769-71.

(*o*) Parl. Deb. (1826-27) 16, c. 151; *ibid.* (1837) 36, cc. 769-71; *ibid.* (1857-58) 148, c. 1731; *ibid.* (1861) 164, cc. 979, 982, 983, 986, 987, 990.

(*p*) Parl. Deb. (1811) 20, c. 463; *ibid.* (1819) 39, c. 293.

(*q*) Parl. Deb. (1836) 31, cc. 277, 279.

(*r*) C. J. (1819) 159; *ibid.* (1857-58) 68.

their unbiassed, or any, testimony on behalf of the petitioner and against the respondent, was given leave to be heard by his counsel in support of the allegations of his petition (C. J. (1806-7) 175, 196).

### COMPLAINTS BY OFFICERS OF THE HOUSE

The proceedings when a complaint is made by Black Rod or the Deputy Great Chamberlain to the Lords or by the Serjeant at Arms to the Commons, are similar to those which take place when a complaint is made to the House by a Member. The person complained of may be called in (*s*) or ordered to be brought to the bar forthwith (*t*) or he may be ordered to attend the House on a future day, to answer the matter of the complaint (*u*) or such other proceedings had as are deemed proper.

When the Serjeant at Arms has a communication to make to the House of Commons the regular course is for the Speaker to acquaint the House that the Serjeant has a communication to make to the House ; whereupon the Serjeant comes to the bar and makes his communication to the House. The subject-matter of the communication may be taken into consideration forthwith (*a*) or appointed for consideration upon a future day (*b*).

In one instance the Speaker acquainted the House that he had received a report from the Serjeant at Arms relating to the conduct of certain Members. The report stated that the messengers of the House acting under his orders had been forcibly obstructed by certain members of the House in the execution of their duty. No immediate action was taken by the House, but the Chancellor of the Exchequer, on behalf of the Prime Minister, who was absent, stated that the latter proposed to invite the attention of the House to the report and to ask that appropriate action be taken. At the next sitting the Members concerned expressed their profound regret and unreservedly apologised for their conduct, and the House accepted their apologies. The proceedings were ordered to be entered in the Journals (C. J. (1930-31) 335).

(*s*) L. J. (1805-6) 332.

(*t*) L. J. (1783-7) 613, 647 (1787); *ibid.* (1787-90) 338 (1789); *ibid.* (1787-90) 649 (1790); *ibid.* (1794-96) 241.

(*u*) L. J. (1805-6) 332, 608.

(*a*) C. J. (1840) 25; *ibid.* (1851) 147.

(*b*) C. J. (1882) 183; *ibid.* (1883) 365.

## CHAPTER IX

# JURISDICTION OF COURTS OF LAW IN MATTERS OF PRIVILEGE

### SCOPE OF THE CHAPTER

The extent and limits of the jurisdiction of the courts and of the exclusive jurisdiction of the Houses of Parliament in matters of parliamentary privilege is a difficult question of constitutional law which has provided many puzzling cases, particularly from the seventeenth to the nineteenth centuries. The history of this question affords many contradictory precedents in Parliament and divergent opinions and decisions in the courts. It is a question which has involved the courts in heated conflict with one or the other House of Parliament and has produced more than one temporarily insoluble rupture between the House of Commons and the House of Lords. In the course of this long controversy much light has been thrown on the nature of privilege and the relations between the judiciary and the legislature, although, no doubt, some unsettled questions still remain. It would require a separate treatise to deal adequately with a subject which raises incidentally such important questions of constitutional law. But it may not be useless here to give a brief sketch of the history of the controversy, classifying the principal points in dispute, and noting the solutions which have found acceptance and those which were adopted but ultimately discarded.

This controversy has its roots in the distant past, but it was not of much practical importance until the seventeenth century, and then chiefly in connection with the House of Commons. Its nature was, briefly, as follows. It was common ground between the Houses and the courts that privilege depends on the "known laws and customs of Parliament," and not on the *ipse dixit* of either House. The questions in dispute were, first, the abstract question whether the law of Parliament was a "particular" law or part of the common law in its wide and extended sense, and in the former case whether it was a superior law which overrode the common law. And, secondly, it was the practical question whether a matter of privilege should be judged solely by the House which it concerned, even when the rights of third parties were involved, or whether it might in certain cases be decided in the courts, and, if so, in what sort of cases. Granted that it could be decided in the courts, were the judges bound to act "ministerially," i.e., accept and apply the parliamentary interpretation of the law, or were they free to form their own view of the law of Parliament? There were no simple and uniform solutions, it was soon found, to these questions, because of

the variety of the issues of privilege that might arise and because of the different relations in which a particular issue might stand to the substance of the action which brought it within the jurisdiction of a court.

At first sight there seemed to be a complete antinomy or contradiction in law between two equally respectable principles, urged with conviction and occasionally with heat by two constitutional authorities, each supreme in its own sphere and neither of which could compel the submission of the other. On the one hand, the House of Lords or the House of Commons, while admitting that it could not create a new privilege, claimed to be the sole and exclusive judge of its own privilege. On the other hand, the courts maintained that privilege was part of the law of the land, and that they were bound to decide questions coming before them in any case within their jurisdiction, even if privilege were involved. These conflicting views could not be reconciled without exposing the misconceptions which were responsible for such fallacies as each contained, and without laying down the limits within which the sound parts of each doctrine must operate.

#### THE POINT OF VIEW OF THE TWO HOUSES

Both Houses claimed to be exclusive judges of their own privileges (*a*). But as it was the House of Commons principally that was led by this claim into disputes with the courts, it will be sufficient to concentrate on the attitude of that House. In the early days the maintenance of its privileges was of vital importance to the House of Commons. They were necessary to preserve its independence of the king and the lords and, indeed, to its very existence. It could not therefore admit the right of any other authority in the state to decide what its privileges were. To concede this right to the courts meant that in the last resort the Commons' privileges were at the mercy of the House of Lords. In support of this attitude it could point to ancient statements of the *Lex Parliamenti* which seemed to mark that law off entirely from the common law and to subject it to the exclusive jurisdiction of Parliament. These statements are examined below (pp. 163-4). But it may be noted here that they failed to distinguish between the power of Parliament as a whole and the power of a single House by itself, and also between the power of Parliament as a legislature and the power of each House as a court for the trial of a question of privilege; and that, as a consequence, the House of Commons laid itself open to the charge of placing privilege above the law, and of attributing to its own resolutions the force of legislation.

#### THE POINT OF VIEW OF THE COURTS

After a period of acquiescence in the "superiority" of Parliament and in the "particularity" of the *Lex Parliamenti*, the courts, about the end of the seventeenth century began to draw distinctions between the constitutional position of the High Court of Parliament and that of each House of Parliament singly; and to claim that parliamentary

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(*a*) The House of Commons made this claim in its extreme form as late as 1837. (C. J. (1837) 418.)

privilege was but a branch of the law of the land which they were bound to administer. They pointed out that the admission that neither House could create a new privilege proved that the limits of privilege were ascertainable; and they showed that decisions of the House of Commons had been inconsistent with each other or had been contradicted by the House of Lords, and that claims of privilege had sometimes been obvious abuses. To the Commons' objection that to admit the jurisdiction of the courts in matters of privilege was to make the House of Lords the judge in the last resort of the privileges of the House of Commons, the courts replied that, granted that was so, it would not prejudice the Commons, since, the privileges of both Houses being broadly identical, the Lords had no interest in curtailing the Commons' privileges. The courts argued, further, that their refusal to adjudicate where parliamentary privilege was involved would in many cases result in a failure of justice, since the House of Commons could not give remedies or award damages or decide litigation between parties.

#### RECONCILIATION OF THE TWO POINTS OF VIEW

The problem thus became one of reconciling the law of privilege with the general law. The solution, gradually marked out by the courts, which has secured a large measure of tacit acceptance in Parliament itself, is to insist on their right in principle to decide all questions of privilege arising in litigation before them, with certain large exceptions in favour of parliamentary jurisdiction. Two of these, which are supported by a great weight of authority, are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to try persons accused of breach of privilege and to commit them for contempt at its discretion.

In the following pages, after the leading cases have been set out briefly, illustrations will be given from text-books, parliamentary decisions and judicial observations of certain misconceptions which originally obscured the subject and the manner in which these were cleared away. This will be followed by a short account of the principles on which the courts have tried to define the limits between their jurisdiction and that of the Houses of Parliament. Finally, an attempt will be made to sum up the present position in the light of the best modern opinion.

### CASES INVOLVING INTERPRETATION OF PARLIAMENTARY PRIVILEGE

#### EARLY CASES: INCONSISTENT DECISIONS

*Thorpe's case*, 1452.—The particular circumstances of this case are set out on p. 69. It was decided by the Lords, but the opinion was taken of the judges attending in their capacity, by then established, of advisers. The opinion of Chief Justice Fortescue in the name of the judges, often quoted in favour of excluding the courts from jurisdiction in matters of privilege, was as follows:—

“That they ought not to answer to that question, for it hath not been used aforetyme, that the justices should in anywise determine the privilege

of this High Court of Parliament; for it is so high and so mighty in its nature, that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the Lords of the Parliament, and not to the justices." (5 Rot. Parl. 240; 1 Hatsell, pp. 28-34; see also Lord Ellenborough's observations upon this case, 14 East, at p. 29.)

He went on, however, to state and justify in general terms the extent and limits of the privilege of freedom from arrest, and the procedure for enforcing it.

This famous and somewhat remote case throws more light upon the weakness in face of faction of the law in the fifteenth century than upon the competence of the courts to decide questions of privilege. Here the judges were not in the position of actually trying the case. Accordingly their disclaimer is in itself no argument against the jurisdiction of the courts in matters of privilege. But the reasons which they gave are of great interest, for they foreshadow the three grounds which have been urged with decreasing acceptability in favour of the exclusive privilege jurisdiction of the Houses down to modern times, viz:—

- (1) the superiority of the High Court of Parliament to any other court,
- (2) its legislative supremacy,
- (3) the ignorance of the courts of the law of Parliament.

These grounds to which the frequent citation of Thorpe's case gave too long currency will be examined on pp. 163-170. In the meantime it may be said that they involve a confusion between the judicial and legislative functions of Parliament, and a misconception of the relations between the law of Parliament and the general law, which were natural in the fifteenth century, but have been gradually cleared up—as a result very largely of later cases in which the claims of the House of Commons have come into conflict with decisions of the courts.

Two early cases in which the judges in court decided a question as to the existence of parliamentary privilege are *Donne v. Walsh* (b), 1472, and *Ryver v. Cosins* (c), 1472.

*Cases of Donne v. Walsh and Ryver v. Cosins, 1472.*—The first case was an action for debt brought against John Walsh, a servant of the Earl of Essex, during the session. The defendant produced a writ of supersedeas under the great seal staying the action on the ground that members of Parliament and their servants were protected by custom from being arrested, imprisoned or impleaded for debt during Parliament.

The plaintiff claimed that there was no such custom. And the Barons of the Exchequer, after conferring with the other judges, decided against the privilege and disallowed the writ. (1 Hatsell, 41.)

In the second action a similar writ of supersedeas, produced by the defendant, was disallowed on the same grounds. (1 Hatsell, 43.)

But see *Atwyll's case*, 1477 (p. 69), in which protection was given to a Member of Parliament against the execution of judgments in the Exchequer by a Commons' Bill which received the royal assent. The preamble of the

(b) 1 Hatsell, 41.

(c) 1 Hatsell, 43.

bill claimed the privilege of not being impleaded as a prescriptive right. (See Hatsell's conclusions, I, 65-9.)

#### INCREASING TENDENCY OF COURTS TO QUESTION PARLIAMENTARY CLAIMS

*Benyon v. Evelyn*, 1664.—This case was one in which Sir George Benyon brought an action against Sir George Evelyn, a Member of Parliament, for £151 owed for merchandises; Evelyn pleaded the Statute of Limitations. The plaintiff replied that the defendant, being continuously a Member of the Commons for a long period, could not be impleaded. He cited a resolution of the Committee of Privileges of the House of Commons that it was a breach of privilege to sue out and file an original writ against a Member of Parliament. It was held, however, that it is lawful to sue out an original against a Member of the House of Commons although Parliament is sitting, judgment accordingly being given for the defendant.

In the course of his judgment, Sir Orlando Bridgman, Chief Justice, made some observations on the duty of the courts to decide questions of privilege incidental to matters properly within their jurisdiction; denied that decisions of the House of Commons on questions of privilege should necessarily be accepted by the courts as conclusive; and drew a distinction, as regards the claim of the House to exclusive jurisdiction, between matters of privilege arising *ab intra* and those in which persons outside were concerned. This judgment repays study; it gives the earliest expression to several of the main principles which are now generally accepted by the highest judicial opinion. (124 English Reports 615.)

*Barnardiston v. Soame*, 1674.—The proceedings in the Court of King's Bench, Exchequer Chamber and House of Lords arose out of an action by Sir Samuel Barnardiston, a parliamentary candidate, against Sir William Soame, Sheriff of Suffolk, alleging that the sheriff falsely and maliciously made a double return which included another candidate for whom fewer votes had been given by the electors. Although the evidence of malice and falsity was slender, the jury found for the plaintiff and awarded £800 damages for a malicious double return. (6 St. Trials, 1063.)

The judgment having been affirmed by the Court of King's Bench, a writ of error brought the case to the Exchequer Chamber, where the judgment was reversed for the reason given by Lord Chief Justice North, namely, that the trial of elections and the functions of the sheriff, which were essential to the case, were matters of privilege within the exclusive jurisdiction of the House of Commons. In his judgment, North included remarks about judicial ignorance of "the course of Parliament" and the privileges of Parliament, and also about the right of the Houses to determine the extent and limits of their privileges, which seemed to put privilege outside, if not above, the general law. These doctrines were severely treated by later judges.

Soon after the Revolution, Sir Samuel Barnardiston brought his writ of error in the House of Lords, to reverse the reversal of the judgment given in the Exchequer Chamber; but the House on 25th June, 1689, affirmed the reversal of the judgment.

As a result of this judgment, although it so strongly reinforced their claim to exclusive jurisdiction, the Commons were disturbed because it seemed to open the door to the making of false returns. Shortly afterwards, therefore, the legislature interposed a statutory remedy (7 and 8 Will. 3, c. 7, made perpetual by 12 Anne, St. 1, c. 15), which allowed damages for false

returns and for maliciously making double returns, and provided that officers making such returns could be sued "in any of his Majesty's Courts of Record at Westminster." But the same statute also declared it to be illegal for a returning officer to make any return which conflicted with "the last determination in the House of Commons of the right of election." (See Broom Const. Law, p. 834, *et seq.*)

The Commons attempted to have the best of both worlds—to retain the right exclusively to determine the qualifications of electors, but to provide individual Members with a remedy at law against returning officers.

*Shaftesbury's case*, 1677.—The Earl of Shaftesbury was committed to the Tower of London under an order of the Lords that the Constable of the Tower of London should receive him and keep him in safe custody "during . . . the pleasure of this House, for high contempts committed against this House, and this shall be a sufficient warrant on that behalf." (6 State Trials, 1271). Lord Shaftesbury's counsel argued before the Court of King's Bench on a writ of habeas corpus that this committal order was insufficient because the general allegation of high contempts was too uncertain for the court to judge upon the matter.

The decision of the judges was, however, unanimous that they could not question the judgment of the House of Lords, as a superior court, on a committal order for contempt. (6 State Trials, 1296, *et seq.*)

*Case of Sir William Williams*, 1684.—Sir William Williams, Speaker of the House of Commons, in the short Parliament of 1681, had printed and published by order of the House, within the walls of Parliament, a paper well known in the histories of that time as Dangerfield's Narrative. This paper contained reflections upon the Duke of York, afterwards James II, and an information for libel was filed against the Speaker by the attorney-general in 1684. He pleaded to the jurisdiction of the court, that as the paper had been signed by him, as Speaker, by order of the House of Commons, the Court of King's Bench had no jurisdiction over the matter. On demurrer, this plea was overruled, and a plea in bar was afterwards made, but withdrawn; his plea, that the order of the House was a justification, was set aside by the court, without argument, as "an idle and insignificant plea;" and he was fined £10,000. Two thousand pounds of this fine were remitted by the king, but the rest he was obliged to pay. (13 State Trials, 1439.)

After the Revolution the House of Commons declared this judgment to be "illegal and subversive of the freedom of Parliament" (12th July, 1689). It was also included in the general condemnation by the Bill of Rights, of "prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament." (C. J. (1688-93) 146, 177, 205, 215; 2 Show. 471; 13 State Trials 1370, n.) Bills to reverse the judgment were brought into the House of Commons in 1689, 1690 and 1695. In 1695 the bill passed the Commons, but failed to get through committee in the Lords, possibly, as suggested in W. Wynn's "Argument upon the Jurisdiction of the House of Commons," because it contained a provision for the compensation of Williams at the cost of Sir R. Sawyer, who, as Attorney-General, had filed the information against him. (13 St. Tr. 1439.)

*Jay v. Topham*, 1682-89.—An action for trespass was brought by Jay against Topham, Serjeant at Arms, for arresting and detaining him in prison for ten days, and also alleging that Topham extracted £30 from Jay for releasing him. Topham pleaded that there was an order of the House for taking Jay into custody and bringing him to the bar of the House for an offence committed in breach of privilege, that he detained Jay by virtue



of that order, and that therefore the Court had no jurisdiction. Judgment was given by the Court of King's Bench against Topham, who subsequently (in 1689) petitioned the Commons against the judgments in Jay's case and eight similar actions. (12 St. Trials, 821-834.)

After referring the matter to the Committee of Privileges the House resolved "That this House doth agree with the Committee that the judgment given by the Court of King's Bench, Easter Term 34 Car. II Regis, upon the plea of John Topham at the suit of John Jay" . . . (was) "illegal, a violation of the privileges of Parliament, and pernicious to the rights of Parliament" (C. J. (1688-93) 209.)

The House then ordered the attendance of Sir Francis Pemberton and Sir Thomas Jones, who had been two of the judges at the Court of King's Bench at the time when judgment was passed, to attend at the Bar of the House in order to explain their conduct. Sir Francis Pemberton said that the defendant Topham had pleaded to the jurisdiction of the Court, because there existed an Order of the House which removed the case from the jurisdiction of the Court. Both Sir Francis Pemberton and Sir Thomas Jones, in defending themselves for their conduct in overruling the plea of the Serjeant, justified the judgment they had given, not by denying the jurisdiction or authority of the House, but by saying that the defendant's plea would have been a valid one in bar to the action, but was invalid because Topham pleaded that the Court of King's Bench had no jurisdiction. The plea was no answer to the allegation that money had been unjustly extracted from Jay.

" . . . We did not question the legality of your orders, nor the power of them; but the great business was, whether he (Topham) had pursued this order of the House of Commons, and that was the thing properly examinable . . . if we could not examine it, the man would be without any remedy in the world. So that if one of your officers should abuse your orders, the person that he hath abused could have no help, if the courts of law could not help him." (12 State Trials 829.)

Both judges admitted that where the entire matter is transacted in the House it would have been proper to plead such a matter to be outside the jurisdiction of the court.

Both judges were resolved to have been guilty of breaches of privilege because they overruled Topham's plea, and were taken into custody till the next prorogation. (See 12 State Trials, pp. 821-834.)

The treatment of Pemberton and Jones by the Commons was severely censured by later judges. Lord Ellenborough thought that they had been unjustly punished for a "righteous judgment" (14 East 109), and Lord Denman, that they had justified their judgment by unanswerable reasoning (3 State Trials (n.s.) 869).

*R. v. Knollys*, 1694.—Charles Knollys was indicted for murder. Arrested as a commoner, the defendant pleaded a misnomer when the trial came up in the King's Bench, on the ground that he was the legitimate Earl of Banbury. The Attorney-General replied that the defendant had already preferred a petition to the House of Lords that he might be tried by his peers, but that the House of Lords had dismissed his petition, *secundum legem parliamenti*, and disallowed his peerage, and made an order that the defendant should be tried by the common law. After legal argument the court of King's Bench unanimously decided for the defendant, on the following grounds:—

1. The exceptions taken by the prosecution to the plea did not touch the claim to the title, but raised objections of law and procedure which could not be upheld.

2. The decision of the Lords was not conclusive against the claim to peerage because :—

- (a) The defendant's title to the earldom had not been before the Lords, and the dismissal of his claim to be tried by his peers was not a judgment against his title or properly a judgment at all. It was difficult to see what jurisdiction the House of Lords claimed to be exercising; not their appellate jurisdiction—this was an original case—nor their jurisdiction in peerage cases—there had been no reference from the king (d).
- (b) The law of Parliament (which according to the Attorney-General justified the proceedings of the House of Lords) was to be regarded as the “law of the realm”; but even if it were a “particular law,” this would not prevent the King's Bench deciding a matter which was properly within their jurisdiction (i.e., even if it involved a question determinable by law of Parliament.) (1 *Ld. Raymond* 10.)

This judgment was very distasteful to some Lords and therefore in Hilary term 1697 (9 Will. 3), the Lord Chief Justice Holt was summoned to give his reasons for this judgment to the House of Peers, and a committee was appointed to hear and report them to the House . . . But the Chief Justice Holt refused to give them in so extrajudicial a manner. But he said, that if the record was removed before the peers by error, so that it came judicially before them, he would give his reasons very willingly; but if he gave them in this case, it would be of very ill consequence to all judges hereafter in all cases. At which answer some lords were so offended, that they would have committed the Chief Justice to the Tower. “But notwithstanding, all their endeavours vanished in smoke.” (1 *Ld. Raymond*, p. 18.)

*Ashby v. White and others*, 1703-4.—The plaintiff was a burgess of Aylesbury, and as such entitled to vote for two Members of Parliament. On the day of the election he requested the defendants, who were the Returning Officers of the borough, to receive his vote. This the defendants refused to do, and the plaintiff was not allowed to vote.

The plaintiff brought an action against the Returning Officers for fraudulently and maliciously refusing his vote, and was awarded damages by the jury. It was moved in the Queen's Bench in arrest of judgment that the action was not maintainable. Judgment was given for the defendants by three judges, Holt, C. J., dissenting. The grounds for this decision were that: never such a like action had been brought before; the plaintiff had suffered no actual damage; and the matter was particularly reserved for Parliament as being properly conusable by them alone. (2 *Ld. Raymond*, 938.)

The plaintiff appealed, and the case was brought on writ of error before the House of Lords, and on 14th January, 1703, the decision was reversed by fifty lords to sixteen, on the grounds set forth in Holt's dissenting judgment in the court below.

The dissenting judgment of Holt, C. J., briefly stated, was based on the following grounds :—

“The plaintiff's right to vote being unquestioned, he had an action for damages for being deprived of it.

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(d) “The proper course for the trial of the right of peerage is by petition from the claimant to the king, who, thereupon, if he has any doubt upon the matter, refers it to the Lords, to examine into it and make their report of it to him; and upon their report the king determines of it.” (Attorney-General in *Burdett v. Abbot*, assented to by Lord Ellenborough, 14 East, 139 *et seq.*)

"The right was determinable by the Queen's Bench because it rested on charter or custom and was a matter of property.

The objection that the matter was determinable in Parliament did not exclude the jurisdiction of the court, because it was determinable in Parliament only as a question incident to the trial of a controverted election." (2 *Ld. Raymond*, 938.)

The House of Commons at once took up the challenge, and, after debating for several days, adopted a number of resolutions to protect their interpretation of their privileges:—

On 26th January, 1704, a Committee of the whole House to whom it was referred to consider the report of the Journals of the House of Lords touching the case of *Ashby v. White* and the case of *Barnardiston v. Soame*, reported several resolutions, the chief of which was agreed to by the House in the following terms:

"Resolved, that whoever shall presume to commence or prosecute an action, indictment, or information, which shall bring the right of the electors, or persons elected to serve in Parliament, to the determination of any other jurisdiction, than that of the House of Commons (except in cases specially provided for by Acts of Parliament) such person and persons . . . are guilty of a high breach of the privilege of this House."

The House also adopted the resolution that, "according to the known laws and usage of Parliament it is the sole right of the Commons of England . . . to examine and determine of matters relating to the right of election of their own Members," and that *Ashby* in prosecuting an action at common law against *White* was guilty of a breach of privilege. (*C. J.* (1702-4) 308.)

The House of Lords also debated this question and passed counter-resolutions, and conferences between the two Houses failed to effect a reconciliation. But an even sharper conflict arose between the two Houses, and between the Commons and the courts, when *Paty* and four other *Aylesbury* men, supported by the decision of the House of Lords in *Ashby v. White*, brought actions similar to that of *Ashby*'s.

*R. v. Paty and others*, 1704.—*Paty* and four others were committed by the Speaker of the House of Commons by virtue of an order of the House of 5th December, 1704, on the grounds that they were guilty of commencing an action at common law against the constables of *Aylesbury*, for not allowing their votes in the election of Members to serve in Parliament.

The defendants having been committed to *Newgate* by the House of Commons, were now brought into the court of Queen's Bench by several writs of *habeas corpus*; and the cause of their commitment was returned to be a warrant signed by the Speaker, requiring the keeper of *Newgate* to take into his custody the several persons defendants, for having commenced and prosecuted an action at law against the constables of *Aylesbury* for refusing their votes in the election of members of Parliament, in contempt of the jurisdiction and open breach of the known privileges of the House of Commons. Counsel for the prisoners prayed that they might be discharged because the warrant was informal, and because they had done no unlawful act; for the prosecution of a suit is lawful, and no breach of the privilege of that House. But *Powell*, *Powys* and *Gould*, Justices, held, first, That the commitment was well enough in form; because it was according to the usual manner of commitments by that House; secondly, that the House of Commons were the proper judges of their own privileges; and this Court was now estopped to say that this was not a breach of the privileges of the House of Commons, or that the House of Commons had

no such privilege. Holt, C. J., *contra*, said that this was no breach of privilege of the House of Commons:—

“The privileges of the House of Commons are well known, and are founded upon the law of the land, and are nothing but the law . . . If they declare themselves to have privileges, which they have no legal claims to, the people of England will not be estopped by that declaration” (2 Ld. Raymond at pp. 1114–5).

He declared that the commencing and prosecution of an action did not necessarily imply a going farther than the bare filing and continuing of an original, which is no breach of privilege; he said: “The suing was no breach of privilege, nor can their judgment make it so, nor conclude this Court from determining contrary; when the House of Commons exceed their legal bounds and authority, their acts are wrongful, and cannot be justified more than the acts of private men; that there was no question but their authority is from the law, and as it is circumscribed, so it may be exceeded; to say they are judges of their own privileges and their own authority, and no body else, is to make their privileges to be as they would have them. To conclude, all Courts are so far judges of their own privileges, and intrusted with a power to vindicate themselves, that they may punish for contempts; but to make them, or any Court, final judges of them, exclusive of every body else, is to introduce a state of confusion, by making every man judge in his own cause, and subverting the measures of all jurisdictions.” (2 Ld. Raymond, 1105–1115.)

On 3rd February, 1705 the House was informed that there had been endeavours by Paty to petition the Queen for a writ of error on the proceedings in the Court of Queen’s Bench upon the habeas corpus in Paty’s case, and thereby to bring the commitments by the Commons under the examination of the Peers.

The House thereupon resolved that an address be presented to her Majesty “to lay before her Majesty the undoubted right and privilege of the Commons in England to commit for breach of privilege; and that the commitments of this House are not examinable in any court whatsoever; and that no such writ of error was ever brought, nor doth . . . lie in this case.” (C. J. (1702–4) 549.)

On receipt of the Commons address, the Crown referred the question to the judges, whether the grant of a writ of error was of right, or of grace, and received an answer from ten of the judges, “that a writ of error in this case ought to be granted of right, and not of grace,” and from two of the judges, “that Your Majesty is not of right and justice obliged to grant a writ of error in this case.”

After moving their address the House of Commons went on to resolve that whoever had prosecuted the writs of habeas corpus were “guilty of conspiring to make a difference between the Lords and Commons.” The House then appointed a committee to find the persons who had been concerned in prosecuting or pleading upon the writs of habeas corpus, or writs of error, on behalf of the Aylesbury men committed for breach of privilege. (C. J. (1702–4) 550.) On 26th February, the committee reported the names of the Counsel and others concerned in prosecuting and pleading the writs of habeas corpus and error, and the House ordered them all to be committed into the custody of the Serjeant at Arms. On 27th February, the Serjeant reported that he had taken several of the Counsel and others concerned into custody, but admitted failure in the case of one member of the Bar: “He got out of his chamber in the Temple, two pairs of stairs high, at the back window, by the help of his sheets and a rope.” (C. J. (1702–4) 552–3.)

The House then ordered several Members to search the Journals of the House of Lords to find what proceedings there had been in that House relative to the five persons originally committed to Newgate for breach of privilege (i.e. the Aylesbury men). On 28th February, these Members reported they had found in the Lords Journals two petitions' from the prisoners relating to the obtaining of the writs of error and praying the protection of the House of Lords for their Counsel and agents.

The Lords Journals show that on receipt of the petitions the Lords summoned the judges to come prepared "to speak to the point, whether a writ or error was a writ of right or of grace. The Lords also informed the petitioners that their Counsel and agents should have the protection of the House of Lords, and asked for their names. (L. J. (1701-4) 676.) These names were supplied to the Lords by the petitioners on the very day that the Commons were ordering the Serjeant to arrest the Counsel for breach of privilege, and on the same day (26th February) the Lords ordered that "All Serjeants at Arms and other persons whatsoever are . . . strictly prohibited from arresting, imprisoning, or otherwise detaining . . . any or either of them." (L. J. (1701-4) 676.)

On 27th February the Lords resolved that "Neither House of Parliament hath the power, by any vote or declaration, to create to themselves any new privilege, that is not warranted by the known laws and customs of Parliament." (L. J. (1701-4) 677.)

Secondly, they resolved that "Every freeman of England, who apprehends himself to be injured, has a right to seek redress by action at law, and that the commencing and prosecuting an action at common law against any person (not entitled to privilege of Parliament) is no breach of the privilege of Parliament." (L. J. (1701-4) 677.)

The Lords went on to resolve specifically that the House of Commons in committing the five Aylesbury men for breach of privilege because they commenced an action at common law "have claimed a jurisdiction not warranted by the Constitution and have assumed a new privilege, to which they can shew no title by the law and custom of Parliament." (L. J. (1701-4) 678.)

The Lords then heard the judges on the point whether in this case a writ of error is a writ of right or of grace. Having had the judges' answer, the Lords resolved "that a writ of error is not a writ of grace, but of right; and ought not to be denied to the subject . . . at the request of either House of Parliament; the denial thereto being an obstruction of justice, contrary to Magna Charta." (L. J. (1701-4) 678.)

On the next day, 28th February, the Lords agreed on the heads for a conference concerning the proceedings of the House of Commons with regard to the Aylesbury men, and the conference took place at which the Lords reported to the Commons the substance of the resolutions already described. (C. J. (1702-4) 555.)

On 6th March, the Commons prepared a very lengthy answer to the Lords' charges against them expressing "the great surprise of the Commons when your Lordships had invited them to conference about some ancient fundamental rights of the Kingdom, (to find) the ancient and fundamental rights of the House of Commons . . . censured and treated in a manner unknown to former Parliaments." The Commons affirmed that their commitment of the Aylesbury men was justified by ancient precedents and by the usage and custom of Parliament. (C. J. (1702-4) 559-563.)

On 7th March, the Lords appointed a committee to prepare an address to her Majesty to grant warrants for writs of error to Paty and another

Aylesbury man who had petitioned her Majesty for the same. (L. J. (1701-4) 693.) On the same day the Serjeant at Arms informed the Commons that he had received writs of habeas corpus under the Great Seal relating to two of the Counsel for the Aylesbury men. The Commons immediately resolved that the Serjeant should not obey the writs of habeas corpus and that the Lord Keeper should be informed that the said writs of habeas corpus were superseded as contrary to the law and privileges of this House. (C. J. (1702-4) 565.)

On 9th March, a free conference was held between the two Houses, and after the conference the Lords reaffirmed their resolutions concerning the proceedings relative to the Aylesbury men. (L. J. (1701-4) 694-5.) (For detailed report of this conference see C. J. (1702-4) 569-575.)

On 13th March the Lords' Committee reported that they had prepared a draft for an address to her Majesty asking her to grant the Aylesbury men's petition for a writ of error, which was agreed to by the House. (L. J. (1701-4) 698-715.)

On 14th March the Queen answered as follows: "I should have granted the writ of error desired in this address; but finding the absolute necessity of putting an immediate end to this session, I am sensible there could have been no further proceeding upon that matter." (L. J. (1701-4) 716.)

The Commons were not deterred by Paty's case from resuming their challenge at a much later date. On 9th March, 1767, a complaint was made in the House of Commons that certain persons were committing a breach of privilege by bringing an action against the Sheriff of Pembroke for refusing their votes at an election. (C. J. (1766-68) 211.) An order for their attendance at the Bar of the House resulted in the action being discontinued (*ibid.* 229, 279, 293).

#### MODERN LEADING CASES

*Burdett v. Abbot*, 1811.—This was an action of trespass brought by Sir Francis Burdett (who had published an address to his constituents denying the right of the House to imprison for breach of privilege) against the Speaker of the House of Commons for breaking and entering the plaintiff's house, seizing the plaintiff, and imprisoning him in the Tower of London. The defendant by special plea justified the trespass. The House of Commons had resolved that: "The plaintiff had published a libellous and scandalous paper reflecting on the just rights and privileges of the House, and had been guilty of a breach of the privileges of the House," and the House ordered that the plaintiff should be committed to the Tower of London, and that the Speaker should issue his warrant accordingly. The defendant, as Speaker, in obedience to the direction of the House, issued his warrant to the Serjeant at Arms to arrest the prisoner, and to the Lieutenant of the Tower to detain him, and it was in pursuance of these warrants that the arrest and imprisonment complained of took place.

This case provides one of the principal authorities for the Commons' (as Lord Shaftesbury's case does for the Lords') power to commit for contempt, and is dealt with from that point of view elsewhere (see p. 91).

Apart from Williams in 1685, no action had been (or has since been) brought against the Speaker for obeying a direction of the House. The case is remarkable for the voluntary submission by the House of one of its privileges to the jurisdiction of the courts—a privilege which had been frequently exercised and of the existence of which there could be little doubt—instead of forcibly resisting by the imprisonment of Counsel and

others concerned in the prosecution, for which there would have been abundant precedent. The result of this action was to demonstrate the conformity of the *lex Parliamenti* with the *lex terræ*.

It was argued for the plaintiff that the law of Parliament was part of the law of the land, and that the courts were entitled, and indeed bound, to decide questions of privilege coming incidentally before them. The Attorney-General in reply maintained that the committal of Burdett was the judgment of a court of competent jurisdiction which could not be inquired into by another court, and that the issue of privilege did not arise incidentally, but was the direct issue before the court. The judgment of the Court of King's Bench was unanimous for the defendant. Lord Ellenborough, while leaving open the possibility that cases might arise in which the courts would have to decide on the validity of a claim of privilege, held that in this case the House had acted within its powers, and that the powers were no more than those enjoyed by all the superior courts.

If the House had not desired to invite a judicial decision on its power of committal for contempt, it might, on the analogy of Williams' case, have excluded the jurisdiction of the court on the ground that the act for which Abbot was prosecuted—the issuing of the warrant in obedience to the direction of the House—was a proceeding in Parliament (see p. 153). This view appears to be expressed in the judgment of Bayley, J. (14 East, 1 *et seq.*)

In 1812 the judgment was affirmed in the Exchequer Chamber, and in 1817 on writ of error by the House of Lords.

*Stockdale v. Hansard*, 1836-7.—Messrs. Hansard, the printers of the House of Commons, had printed, by order of that House, the reports of the inspectors of prisons, in one of which a book published by John Joseph Stockdale was described in a manner which he conceived to be libellous. He brought an action, during the recess in 1836, against Messrs. Hansard, who pleaded the general issue, and proved the order of the House to print the report. This order, however, was held to be no defence to the action; but Stockdale had a verdict against him upon a plea of justification, as the jury considered the description of the work in question to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the House, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report containing a libel against any man." (3 State Trials, new series, 723 *et seq.*) In consequence of these proceedings, a committee was appointed, in 1837, to ascertain the law and practice of Parliament in reference to the publication of papers, printed by order of the House. The result of these inquiries was the passing of resolutions by the House, declaring that the publication of parliamentary reports, votes, and proceedings was an essential incident to the constitutional functions of Parliament; that the House had sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; that to dispute those privileges by legal proceedings was a breach of privilege; and that for any court to assume to decide upon matters of privilege inconsistent with the determination of either House of Parliament was contrary to the law of Parliament. (C. J. (1837) 418.)

Stockdale, however, immediately commenced another action, and the House, instead of acting upon its resolutions, directed Messrs. Hansard to plead, and the attorney-general to defend them. In this action the privileges and order of the House were alone relied upon in the defence of Messrs.

Hansard; and the Court of Queen's Bench unanimously decided against the claim of privilege.

The case was heard by Denman, C. J., and Littledale, Patterson and Coleridge, Justices. It provides perhaps the fullest account of the relation between the law of Parliament and the general law, and of the power of the courts to decide on questions of privilege.

In his argument for the defendant, the attorney-general claimed that the courts had no jurisdiction in matters of privilege, because the High Court of Parliament was a supreme court and the law of Parliament a separate law, and because a declaration by either House on parliamentary privilege was the judgment of a court of exclusive jurisdiction which was binding on other courts. (3 State Trials, new series, 748 *et seq.*)

In his judgment, Lord Denman insisted on the right of the courts to decide whether a particular claim of privilege fell within the jurisdiction of the House of Commons, irrespective of whether it was the direct issue or came before the court incidentally. He denied that the law of Parliament was a separate law unknown to the judges of the common law courts. The High Court of Parliament was, no doubt, supreme, but either House by itself was only a component part of Parliament, and neither House could bring a matter within its jurisdiction by declaring it to be a matter of privilege. Extracts from this judgment and those of the other three judges are given on pp. 165-6. It was admitted by all four judges that over its own internal proceedings the jurisdiction of the House was exclusive.

The House of Commons was reluctant to act upon its own resolutions and, instead of punishing the plaintiff and his legal advisers, ordered the damages and costs to be paid "under the special circumstances of the case"; though it was determined that, in case of future actions, Messrs. Hansard should not plead and that the parties should suffer for their contempt of the resolutions and authority of the House. Another action was brought by the same person, and for the publication of the same report. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury, in the Sheriff's Court, at £600. The Sheriffs of Middlesex levied for that amount, but, having been served with copies of the resolutions of the House, they delayed paying the money to Stockdale as long as possible. At the opening of the session of Parliament in 1840, the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, and committed Stockdale to the custody of the Serjeant. The sheriffs were desired to refund the money, and, on their refusal, were also committed. (The sheriffs paid the money to Stockdale under an attachment, *Stockdale v. Hansard* (1840, 11 Ad. & El. 253).) Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape with a reprimand. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence. Messrs. Hansard were again ordered not to plead, and once more judgment was entered up against them. As the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions, protection was obtained for the publication of parliamentary papers by the Parliamentary Papers Act, 1840 (see p. 57).

*Howard v. Gossett*, 1845.—In the contest with the House of Commons carried on by Stockdale and by his attorney, an action was commenced by Mr. Howard against Sir William Gossett (10 Q. B. 359 & 411) and other officers of the House, known as 'Howard's second action,' for taking him into custody, and conveying him to Newgate, in obedience to orders of the House and the Speaker's warrant (C. J. (1843) 59). The House gave the



defendants leave to appear, and directed the attorney-general to defend them (C. J. (1843) 118; Parl. Deb. (1843) 67, c. 22, 975). The circumstances which originated this action and the results to which it led, may be briefly described. When Mr. Howard commenced his fourth action against Messrs. Hansard, he was ordered to attend the House; but having wilfully evaded the service of the order, the House, instead of resolving that he was in contempt, adopted the precedent of 31st March, 1731 (C. J. (1727-32) 705) and, according to ancient custom, ordered that he should be sent for in the custody of the Serjeant (C. J. (1840) 30), and that Mr. Speaker should issue his warrant, which directed the Serjeant at Arms "to take into your custody the body of the said Thomas Burton Howard." Howard was taken into custody on this warrant, and brought to the bar; and it was for this arrest that the action of trespass was brought.

In the argument it was contended, not only that the warrant was informal, but that the House had exceeded its jurisdiction in sending for a person in custody, without having previously adjudged him guilty of a contempt. The House might have sent for him, it was urged, and when he did not appear, have declared him in contempt, and committed him for his offence; but they had no right to bring him in custody, and thus imprison him upon a charge instead of on conviction. This doctrine, however, was not supported by the court, but judgment was given for the plaintiff because according to the judgment of the court the warrant was technically informal. The judges, however, considered that no question of privilege was involved in their decision; and, "that the form of the warrants issued by Mr. Speaker, by order of the House, may be questioned and adjudged to be bad, without impugning the authority of the House, or in any way disputing its privileges."

From this doctrine a committee of the Commons (2nd Report on Printed Papers, H. C. 397, p. vi (1845)) entirely dissented. "They could not admit the right of any court of law to decide on the propriety of those forms of warrants which the House, through its highest officer, has thought proper to adopt on any particular occasion; but, in considering the course to be adopted by the House in consequence of this judgment, the committee recommended to the House that every legitimate mode of asserting and defending its privileges should be exhausted before it prevented, by its own authority, the further progress of the action." The House concurred in the opinion of the committee, and ordered that a writ of error be brought upon the judgment of the Court of Queen's Bench (C. J. (1845) 642; see also Parl. Deb. (1845) 80, c. 1097, *ibid.* (1845) 81, c. 1208), though, to avoid "submitting to abide by the judgment of the court of error, in the event of its being adverse," the Serjeant was not authorized to give bail, and execution was levied on his goods (C. J. (1845) 563). Judgment was given by the Court of Exchequer Chamber, on the writ of error, on the 2nd February 1847, when the judgment of the court below was reversed by the unanimous opinion of all the judges of whom the court was composed. They found, "that the privileges involved in this case are not in the least doubtful, and the warrant of the Speaker is, in our opinion, valid, so as to be a protection to the officer of the House." (Shorthand writers' notes, as printed by the House of Commons, H. C. 39, p. 164 (1847).)

*Bradlaugh v. Gossett*, 1884.—The plaintiff, Charles Bradlaugh, was elected a Member of the House of Commons in May, 1883. He was not allowed to take the oath required by the Parliamentary Oaths Act, 1866; and on the 9th July, 1883, the House of Commons passed a resolution restraining the plaintiff from taking the oath and resolving that: "the Serjeant at Arms do exclude Mr. Bradlaugh from the House until he shall engage not to further disturb the proceedings of the House." The disturbance in question arose

from the attempt of Mr. Bradlaugh to take the oath which the law required him to take, and which a resolution of the House prevented him from taking.

The plaintiff sought from the Court of Queen's Bench, first, a declaration that the order of the House of 9th July be declared to be beyond the power and jurisdiction of the House to make, and to be void ; secondly, an order restraining the defendant, the Serjeant at Arms, from preventing him by force from entering the House, and taking the oath as a Member ; but the court decided against Mr. Bradlaugh on the ground that the order under which the Serjeant acted related to the internal management of the procedure of the House, over which they had no jurisdiction (12 Q. B. D. 271). (For other aspects of this case, see pp. 60-61.)

## MISCONCEPTIONS AS TO THE NATURE AND AUTHORITY OF PARLIAMENTARY LAW AND PRIVILEGE

### CONFUSION OF LEGISLATIVE AND JUDICIAL JURISDICTION OF PARLIAMENT

When in the second half of the seventeenth century matters affecting the privileges of either House of Parliament began to be raised in ordinary litigation in the courts, the judges had very few precedents to guide them. The decisions of the Stuart judges were justly suspect, as Holdsworth says. So the judges were forced to seek enlightenment, apart from a few generalizations by text-book writers such as Coke, in medieval cases which belonged to a totally different stage of the constitution. The chief authority which was seized on and quoted over and over again was the pronouncement of the judges when asked their opinion by the Lords, in Thorpe's case, 1452 (which is set out on p. 150).

That opinion seemed to be confirmed by Coke's dictum :

"And as every court of justice hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, etc., so the high court of Parliament *suis propriis legibus et consuetudinibus subsistit*. It is *lex et consuetudo parliamenti* that all weighty matters in any Parliament moved concerning the peers of the realm, or commons in Parliament assembled, ought to be determined, adjudged and discussed by the course of parliament, and not by the civil law, nor yet by the common laws of this realm, used in more inferior courts ; which was so declared to be *secundum legem et consuetudinem parliamenti*, concerning the peers of the realm, by the king and all the lords spiritual and temporal : and the like *pari ratione* is for the Commons for anything moved or done in the House of Commons : and the rather for that by another law and custom of Parliament, the king cannot take notice of anything said or done in the House of Commons but by the report of the House of Commons : and every member of the Parliament hath a judicial place and can be no witness. And this is the reason that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but *secundum legem et consuetudinem parliamenti* : and so the judges in divers parliaments have confessed. And some hold that every offender committed in any court punishable by that court must be punished (proceeding criminally) in the same court, or in some higher, and not in any inferior court, and the court of parliament hath no higher." (Coke on Lex Parliamenti, Fourth Institute, 15.)

In discussing the work of the judges summoned to assist the Lords in matters of the common law, Coke observed: "Neither doth it belong to them . . . to judge of any law, custom, or privilege of parliament. And to say the truth, the laws, customs, liberties, and privileges of parliament are better to be learnt out of the rolls of parliament and other records, and by precedents and continual experience, than can be expressed by any one man's pen." (Fourth Institute, f. 50.)

Blackstone also argued in favour of keeping the privileges of the two Houses indefinite (1 Comm. 164).

These views belonged to a time when the distinction between the judicial and legislative functions of Parliament was undrawn or only beginning to be drawn, and when the separation of the Lords from the Commons was much less complete than it was in the seventeenth century. Views about the High Court of Parliament and its powers which were becoming antiquated in the time of Coke, continued to be repeated far into the eighteenth century, although after the Restoration principles began to be laid down which were more in accord with the facts of the modern constitution (e). But much confusion remained which was not diminished by the use of the phrase "privilege of Parliament." This only means a body of rights common to both Houses, but it suggests joint action (or enforcement) by both Houses, as in legislation, whereas from Ferrers' case in Henry VIII's reign, in 1543 (f) each House enforced its own privileges separately.

Three erroneous notions arise from this confusion of thought:

1. That the courts, being inferior to the High Court of Parliament, cannot call in question the decision of either House on a matter of privilege.
2. That the *lex et consuetudo Parliamenti* is a separate law, and therefore unknown to the courts.
3. That a Resolution of either House declaratory of privilege is a judicial precedent binding on the courts.

In varying degrees each notion has been supported by one or more authorities, and it is proposed to show examples of each.

### 1. THE "INFERIORITY" OF THE COURTS

In the case of *Barnardiston v. Soame*, 1674, Lord Chief Justice North appeared to imply that cases which concerned Parliament were above the jurisdiction of the courts because Parliament itself was superior, "I can see no other way to avoid consequences derogatory to the honour of the Parliament but to reject the action, and all others that shall relate either to the proceedings or privilege of Parliament." (6 State Trials, 1110.)

In *Paty's case*, 1704, Mr. Justice Powell was more explicit in declaring that "the Court of Parliament is a superior court to this court; and though the King's Bench have a power to prevent excesses of jurisdiction in courts, yet they cannot prevent such excesses in Parliament, because that is a

(e) *Bridgman* and, especially, *Holt* were the first to lay these down.

(f) 1 *Hatsell*, 53.

superior court to them, and a prohibition was never moved for to the Parliament." (2 *Ld. Raymond*, 1105.)

In *Stockdale v. Hansard*, 1837-9, the Attorney-General, Sir John Campbell, in arguing that the courts of law had no jurisdiction in matters of parliamentary privilege developed all three misconceptions noted above in an extreme form by attributing to each House separately the whole of the powers which he found in the medieval High Court of Parliament. It is worth setting out his fallacies because their refutation by the judges, especially Denman C. J., and Coleridge J., serves admirably to define the true limits of the modern judicial jurisdiction of the House of Commons.

With regard to the "inferiority" of the courts of law, Campbell said: "The courts of law are subordinate to the Houses of Parliament; and that shows their incompetency to decide upon a question of parliamentary privilege directly arising. Originally, the Houses of Lords and Commons sat together. The courts of law, which at that time were established and had the same powers which they now enjoy, were clearly subordinate to the parliament. A writ of error lay from them to the parliament, and they were accustomed even to consult parliament before they decided points of difficulty and importance. But according to the argument now urged, an Act of the whole parliament might at that very time have been reviewed by a court of law. The Houses of Parliament were subsequently divided. If the courts of law could not, before that time, have enquired into the legality of a commitment, or the publication of a paper, by parliament, neither could they do so afterwards." (3 *S. T. (n.s.)* pp. 761-2.)

The Attorney-General went on to point out the incongruities that might result by reason of the appellate jurisdiction of the House of Lords, if the privileges of either House were subject to the review of the Courts. In the last resort the House of Lords would be the arbiter not only of its own privileges but also of those of the House of Commons (*ibid.* 763). He also argued that the courts were in fact subordinate to the House of Commons (quoting *Com. Dig. Parliament (E. 14)*): "A committee for justice may summon any judges and examine them in person upon complaint of any misdemeanour in their office," and cited the instances of Chief Justice Kelyng, who was summoned before a committee of the Commons, and afterwards before the whole House, in 1667, to answer complaints of judicial misdemeanours, and of Chief Justice Pemberton and Justice Jones, who were committed by the House of Commons in 1689 for contempt on account of their judgment in *Jay v. Topham* (3 *State Trials*, new series, 767-70).

In the judgments of the court the contrast between the medieval and the modern doctrine of the relations between Parliament (or either House of Parliament) and the courts, was for the first time fully exposed; and one of the chief obstacles in the way of understanding the problem was removed.

Lord Denman, C. J.—"The grievance complained of appears to be an act done by order of the House of Commons, a court superior to any court of law, and none of whose proceedings are to be questioned in any way . . . It is a claim for an arbitrary power . . . The supremacy of Parliament, the foundation upon which the claim is made to rest, appears to me to completely overturn it, because the House of Commons is not the Parliament, but only a co-ordinate and component part of the Parliament. That sovereign power can make or unmake the laws; but the concurrence of the three legislative estates is necessary: the resolution of any one of them cannot alter the law or place anyone beyond its control. The proposition is, therefore, wholly untenable, and abhorrent to the first principles of the constitution of England." (3 *S. T. (n.s.)* 850.)

Patteson J., in concurring with Lord Denman, said (*inter alia*): "In making this resolution (of May, 1837, see p. 160), the House of Commons was not acting as a court either legislative, judicial, or inquisitorial, or of any other description. It seems to me, therefore, that the superiority of the House of Commons has really nothing to do with the question." (3 S. T. (n.s.) 911.)

Coleridge J. :—"But it is said that this and all other courts of law are inferior in dignity to the House of Commons, and that therefore it is impossible for us to review its decision. This argument appears to be founded on a misunderstanding of several particulars; first, in what sense it is that this Court is inferior to the House of Commons; next, in what sense the House is a court at all; and, lastly, in what sense we are now assuming to meddle with any of its decisions. Vastly inferior as this Court is to the House of Commons, considered as a body in the state, . . . yet, as a court of law, we know no superior but those courts which may revise our judgments for error; and in this respect there is no common term of comparison between this Court and the House. In truth, the House is not a court of law at all, in the sense in which that term can alone be properly applied here; neither originally, nor by appeal, can it decide a matter in litigation between two parties: it has no means of doing so; it claims no such power; powers of inquiry and of accusation it has, but it decides nothing judicially, except where it is itself a party, in the case of contempts. As to them no question of degree arises between courts; and, in the only sense therefore in which this argument would be of weight, it does not apply. In any other sense the argument is of no force." (3 S. T. (n.s.) pp. 931-2.)

Lord Denman also touched on the misconception resulting from the phrase "privilege of Parliament": "Parliament is said to be supreme; I must fully acknowledge its supremacy. It follows, then, as before observed, that neither branch of it is supreme when acting by itself. It is also said that the privilege of each House is the privilege of the whole Parliament. In one sense I agree to this, because whatever impedes the proper action of either impedes those functions which are necessary for the performance of their joint duties. All the essential parts of a machine must be in order before it can work at all. But it by no means follows that the opinion that either House may entertain of the extent of its own privileges is correct, or its declaration of them binding . . ." (3 State Trials (n.s.) 851.)

## 2. NOTION THAT THE LEX ET CONSUEITUDO PARLIAMENTI IS A SEPARATE LAW, AND THEREFORE UNKNOWN TO THE COURTS

Sir Edward Coke is cited as an authority for the notion that the *lex Parliamenti* is not part of the ordinary law. (4 Co. Inst. 15, see above, p. 163.)

In the judgment of Lord Chief Justice North in *Barnardiston v. Soame*, 1674, "it is an improper discourse for judges, for they know not what is the course of parliament, nor the privilege of parliament. When the Lords in parliament whom they are bound to assist with their advice, ask the judges anything, concerning the course or privilege of parliament, they have answered that they know them not, nor can advise concerning them." (Pollex. 470.)

In *Ashby v. White*, 1704, Powys, J., said, "another reason against the action is, that the determination of this matter is particularly reserved to the Parliament, as a matter properly conusable by them . . . We (the judges) are not acquainted with the learning of elections, and there is a particular

cunning in it not known to us, nor do we go by the same rules." (2 Ld. Raymond, 944.)

The *Aylesbury Men*, 1704.—Similarly, when the writ of habeas corpus to obtain the discharge of the five other Aylesbury men was argued in the Queen's Bench, Mr. Justice Powell said, "the House do not commit by the authority of the common law, but by another law, '*Legem et Consuetudinem Parliamenti*'; for there are in England several other laws, besides the common law, viz., the ecclesiastical law, the admiralty law, etc., and there is the law and custom of parliament, where they have particular laws and customs for their directions." (2 Ld. Raymond, 1110 *et seq.*)

Again, "There is a *lex parliamenti*; for the common law is not the only law in this kingdom; and the House of Commons do not commit men by the common law, but by the law of Parliament. The House of Lords have a power of judicature by the common law upon writs of error, but they cannot proceed originally in any cause. But they proceed, too, in another manner in the case of their own privileges; and therein the judges do not assist, as they do upon writs of error; and Commons have also a power of judicature, and so in 4 Inst. 23; to determine their own privileges; and it is by this law that these persons are committed." (2 Ld. Raymond 1111, cited 14 East, pp. 97-98.)

The Attorney-General, in *Stockdale v. Hansard*: "The constitution supposes that the *lex parliamenti* is not known to the judges of the common law courts. They have no means of arriving judicially at any information on the subject of privilege. The judges, even of the superior courts, are not, in general, and cannot be presumed to have been, members of either House of Parliament . . . The parliamentary reports, and even the journals, furnish little information on the subject, many privileges resting wholly in usage. It is said that all subjects of the realm are bound to take notice of parliamentary privilege; but that does not imply a judicial knowledge. All persons are bound to take notice of the general law of the land; but all are not competent to administer it. It was an observation of Speaker Onslow (cited, 2 Hats. Prec. 75, note; (4th Edn. 1818) 80 note):—'That common lawyers, accustomed to the forms and practice of the Courts of Westminster Hall, know little of parliamentary law, or of the forms of proceeding in Parliament'." (3 S. T. (n.s.) 774-5.)

Again, "the law of Parliament differs from the common law, as do the laws administered in the equity, ecclesiastical, and admiralty courts, with which laws the other courts do not profess to be conversant. It is not necessarily even a part of the law of England, for the Parliament is not of England only, but likewise of Scotland and Ireland. This court, therefore, cannot take cognizance of it. If the court here could do so, a Scotch or even a colonial court might adjudicate upon the law of Parliament. In the latter case an appeal would lie to the Privy Council; so that the privileges of the House of Commons might come to be decided upon by the King and certain of his privy councillors . . ." (3 S. T. (n.s.) 774-5.)

Starting with Holt, C. J., in *R. v. Paty*, the judges began to set aside the presumption of their ignorance of the law of Parliament as a fiction no longer in accordance with the facts of English law:

"The privileges of the House of Commons are well known, and are founded on the law of the land, and are nothing but the law . . . When a matter of privilege comes in question in Westminster Hall, the judges must determine it, as they did in Benyon's case. Suppose these actions against the constables of Aylesbury had gone on, and the defendants had pleaded this

privilege; we must have determined, whether there were any such privilege or no. . . . We must take notice of the *lex parliamenti*." (2 Ld. Raymond, 1114-5.)

Holt in *R. v. Paty*: "Coke's 1st Inst. '*Lex et consuetudo Parliamenti ab omnibus quaerenda, a multis ignota, a paucis cognita*,' and the reason it is known by so few is because they do not seek for it. We are bound to take notice of the customs of Parliament, for they are part of the law of the land; and there are the same methods for knowing it as the law of Westminster Hall." (2 Ld. Raymond, 1105 *et seq.*)

Denman in *Stockdale v. Hansard*: "But it is said that the courts of law must be excluded from all interference with transactions in which the name of privilege has been mentioned, because they have no means of informing themselves what these privileges are. They are well known, it seems, to the two Houses, and to every Member of them, as long as he continues a Member; but the knowledge is as incommunicable as the privileges to all beyond that pale. It might be presumption to ask how this knowledge may be obtained, had not the Attorney-General read to us all he had to urge on the subject from works accessible to all, and familiar to every man of education. The argument here seems to run in a circle. The courts cannot be entrusted with any matter connected with privilege, because they know nothing about privilege; and this ignorance must be perpetual, because the law has taken such matters out of their cognizance. The old text-book writers, indeed, affirm the law and custom of parliament, although a part of the *lex terræ* to be *ab omnibus quaesita, a multis ignorata*. This and other phrases, repeated in the law books, have thrown a kind of mystery over the subject, which has kept aloof the application of reason and common sense." (3 St. Tr. (n.s.) 853.)

Coleridge, J., concurring, said: ". . . Again, it is said that the jurisdiction of the House must be exclusive, because it proceeds, not by the common law, of which alone we are cognisant, but by a different law, the parliamentary law, of which we are wholly ignorant. I cannot think that this argument is entitled to much weight. It is every day's practice with us to decide cases which turn upon the laws of foreign countries, or the laws administered in courts of peculiar jurisdiction in this country. Of these we have no judicial knowledge; but we acquire the necessary knowledge by evidence; and it is not denied that, where in a cause the question of privilege arises incidentally, this Court must take notice of it and inquire into its existence and extent. What therefore it must do in some cases where the same difficulty exists, there can be no moral impossibility on that account of its doing in all. (3 State Trials (n.s.) 925 *et seq.*)

### 3. NOTION THAT A DECLARATION AS TO ITS PRIVILEGE BY EITHER HOUSE IS CONCLUSIVE

If it cannot be accepted that each House is, like the medieval High Court of Parliament, a court superior to any other court, or that the law of Parliament which it administers is a separate law unknown to the judges, it follows that neither House can make a question a matter of privilege by simply declaring it to be so. The courts are not bound by any such declaration:

The power claimed for a House to lay down the law of privilege by its own declaration is only another form of the claim to exclusive jurisdiction in matters of privilege, but it borrows whatever plausibility it has

from a confused analogy with the unchallengeable legislative power of Parliament.

In its crudest form it appears in attempts of one House to alter, suspend or declare the general law by its own resolution.

The best known example is the Resolution of 24th December 1783, whereby the House of Commons sought to suspend the powers of the Commissioners of the Treasury with regard to the authorisation of East India Company Loans under s. 26 of 21 Geo. 3, "until this House shall otherwise direct." (C. J. (1782-4) 854.)

With regard to this Resolution Lord Mansfield said that "for either branch of the legislature to attempt to suspend the law of the land was unconstitutional. . . . A Resolution of the House of Commons ordering a judgment to be given in any particular manner would not be binding in the courts in Westminster Hall." (24 Parl. Hist. 517).

In response to similar attempts of the House of Commons to dictate to the courts, Willes, L.C.J., had said "I will never be bound by any determination of the House of Commons against bringing an action at common law for a false or double return; and a party may proceed in Westminster Hall notwithstanding any order of the House." (*Wynne v. Middleton*, 1 Wils. 128). And Sir O. Bridgman, in the judgment in *Benyon v. Evelyn*, "Resolutions . . . of either House of Parliament, singly . . . are not so concludent in courts of law, but that . . . we must give our judgment according as we conceive the law to be, though our opinions fall out to be contrary to the resolutions or votes of either House." (O. Bridgman 324).

From the view, first advanced by individual judges (such as Holt), and eventually accepted generally, that the law of Privilege was part of the general law, it followed that the House of Commons could not by its mere Resolution extend the sphere of privilege any more than it could by its declaration alter the general law. Such a Resolution was, in effect, an attempt of the Commons to legislate without the King and the Lords.

In the *case of the Aylesbury Men* it was common ground between the Commons, the judges and the Lords that there was a "known law and usage of Parliament," but each claimed the right to declare it. When the Commons declared Ashby's action a breach of privilege because the qualifications of electors were not determinable elsewhere than before themselves, the Lords resolved that this was "in effect to subject the law of England to the votes of the House of Commons." (C. J. (1702-4) 308; L. J. (1701-4) 534.)

When in *Stockdale v. Hansard*, the Commons resolved "that the power of publishing such of its reports, votes and proceedings as it shall deem necessary . . . is an essential incident to the constitutional functions (i.e. is a privilege) . . . of the Commons" (C. J. (1837) 419), the Attorney-General, Sir John Campbell, argued that "the House of Commons has passed a resolution . . . ; that declaration is an evidence of the law which the court is bound to accept." (3 St. Tr. (n.s.) 748, *et seq.*)

But Lord Denman held: "Clearly . . . the court must enquire whether it be a matter of privilege, or a declaration of general law, as indisputably, if it be a matter of general law, it cannot cease to be so by being invested with the imposing title of privilege." (3 S. T. (n.s.) 876.)

He continued, "In truth, no practical difference can be drawn between the right to sanction all things under the name of privilege, and the right



to sanction all things whatever, by merely ordering them to be done. The second proposition differs from the first in words only. In both cases the law would be superseded by one assembly, and, however dignified and respectable that body, in whatever degree superior to all temptations of abusing their power, the power claimed is arbitrary and irresponsible." (3 S. T. (n.s.) 876, 878.)

#### SUMMARY

The comprehensive review of parliamentary privilege which was forced upon the House of Commons and the courts by the two great cases of the early nineteenth century—*Burdett v. Abbot*, 1810, and *Stockdale v. Hansard*, 1837—made it clear that some of the claims to jurisdiction made in the name of privilege by the House of Commons were untenable, and the grounds on which they were made, fallacious. That the law of Parliament was part of the general law, that its principles were not beyond the judicial knowledge of the judges and that it was the duty of the common law courts to define its limits, could no longer be disputed. Yet, that there was a certain sphere in which the jurisdiction of the House was absolute and exclusive, was also to be admitted. The courts had undertaken the task of defining this sphere, and of stating the principles on which it was based. This process was carried a long step towards completion by the notable judgment of Mr. Justice Stephen in *Bradlaugh v. Gossett*, 1884 (12 Q. B. D. (1884) 227 *et seq.*). The history of the process must be described briefly.

### SEARCH FOR A TEST TO DELIMIT THE SPHERE OF EXCLUSIVE PRIVILEGE JURISDICTION

#### "DIRECT" AND "INCIDENTAL" RAISING OF THE ISSUE

In searching for a general principle to distinguish cases in which the courts could properly exercise jurisdiction from those in which the jurisdiction of the Houses was exclusive, the attention of judges and advocates was attracted to the distinction between cases where parliamentary privilege was raised *directly* and those where it was raised *incidentally*. In the first type of case it was held the courts must disclaim jurisdiction; in the second, they might—some said must (*g*)—decide themselves.

The doctrine seems to have originated with *Bridgman* in *Benyon v. Evelyn*, 1664 (see *O. Bridgman* 324 and see p. 152).

The right of the court to examine privilege incidentally arising was also asserted by Sir Thomas Jones, during the inquiry by the Commons into the case of *Jay v. Topham* (see p. 153): "Where the Courts of Westminster have taken cognizance of privilege, it has been only an incident of the case before them." (Quoted in 14 East, 95.)

This doctrine did not prove to be very helpful. In the first place its interpretation was by no means certain. It was generally agreed that a writ of habeas corpus on a commitment for contempt by either House raised the issue of privilege directly.

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(g) See the admission of the Attorney General in *Burdett v. Abbot* (14 East, pp. 88-9).

In *Shaftesbury's case*, 1676, Sir T. Jones, J., said, "The cases where the Courts of Westminster have taken cognizance of privilege differ from this case; for in those it was only an incident to the case before them, which was of their cognizance; but the direct point of the matter now is the judgment of the Lords." (1 Mod. 157.)

But in other cases the lawyers disagreed. The issue raised in Burdett's action against Speaker Abbot for having issued the writ of commitment was described by the Attorney-General (Sir V. Gibb) as directly raising the issue of privilege, and by Burdett's counsel as raising it incidentally. Patteson, C. J., in *Stockdale v. Hansard*, limited "direct" to what was raised by the original issue, and treated as "incidental" whatever was raised in a plea of justification (*h*). The report of the Select Committee on Publication of Printed Papers states in direct terms that they:—

"have not been able to discover any satisfactory rule or test by which to ascertain in all cases whether the question of privilege would be deemed to arise *directly* or *incidentally*: there are many cases which might be decisively placed in the one class or the other, but there may also be very many which cannot be so assigned." (C. J. (1837) 352, Report, paras. 59, 69; see also Lord Denman's view in *Stockdale v. Hansard*, 3 S. T. (n.s.) 876; and that of Coleridge J., *ibid.* 934.)

Secondly, there was no real agreement as to the consequences that should be drawn from the distinction. The representatives of the House of Commons point of view thought that the courts had no right to decide on questions of privilege whether they arose directly or incidentally.

"Your committee are of opinion that the courts have no jurisdiction to decide upon privilege, *either directly or incidentally*, in any sense inconsistent with the independence and exclusive jurisdiction of Parliament. If such a jurisdiction did exist of deciding *incidentally* upon privilege, uncontrolled by Parliament, it would lead to proceedings as incongruous, and as effectually destructive of the independence of Parliament, as if the *direct* jurisdiction existed: a consequence which, together with the extreme uncertainty of the extent of the rule, makes it indispensably necessary that it should be investigated." (C. J. (1837) 352, Report, para. 60.)

Lord Denman interpreted this as a denial to the courts of all jurisdiction over privilege, whether directly or incidentally arising: "This power is denied to the courts by this report for the first and only time." (3 S. T. (n.s.) 877.)

Or if the judges did decide on matters of privilege, they must act *ministerially* and apply the law of privilege as laid down by the House.

The Attorney-General (Sir John Campbell) in *Stockdale v. Hansard*: "I say that if your Lordships were incidentally to take notice of this question (I maintain that it arises directly, but if it were supposed to arise incidentally) your Lordships, as a court, incidentally having cognizance of this question, would be bound by the law laid down by the court of original jurisdiction thus brought to your notice. . . . The question of privilege comes before this Court like a question of foreign law; and, where it becomes necessary to decide incidentally a point of foreign law, or law belonging to another tribunal, the rule always is to follow the law of the court of original jurisdiction." (3 S. T. (n.s.) pp. 785-6.)

Lord Denman: "The Report takes for granted that, if either House has actually come to a decision on the point thus raised, we should be bound to adhere to it: and the Attorney-General insisted that, even if in the present case the question did not arise incidentally, we should be bound by the declaration of the law set forth by the House in any formal statement of its opinion." (3 S. T. (n.s.) p. 877.)

He pointed out that, "we might possibly find out that the other House (or the same House at another time) had come to an opposite declaration." This had actually been the case in *Ashby v. White*. And what was to happen, "suppose an entirely new point to arise, and some party litigating here to set up a claim of privilege never heard of before, as to which therefore neither House had ever framed a resolution." (3 S. T. (n.s.) p. 878.)

On the other hand, the judges, when they had reached the view that privilege was part of the general law, did not feel themselves justified in disclaiming jurisdiction entirely, even in cases where privilege arose *directly*.

Coleridge, J. in *Stockdale v. Hansard*: "... whether directly arising or not, a court of law I conceive must take notice of the distinction between privilege and power; and where the act . . . is clearly of a nature transcending the legal limits of privilege, it will proceed against the doer as a transgressor of the law." (3 S. T. (n.s.) p. 934.)

Whether a question of privilege arises directly or incidentally the court, it was held, must give judgment according to its own view of the law (2).

But as *Stockdale's* counsel said in *Stockdale v. Hansard*: "The distinction between incidental and direct cognizance is obscure; the more intelligible rule is, that the court must notice privileges whenever they come judicially before it." (3 S. T. (n.s.) p. 847.)

In the judgments in *Stockdale v. Hansard* the distinction was virtually abandoned in favour of the more practical doctrine that the courts were bound to decide an issue of privilege, however it arose, and according to "their own notions of the law," in any case which fell within their general jurisdiction.

Patteson, J.: "... I do not . . . lay any great stress on this distinction. It seems to me that if the question (of privilege) arises in the progress of a cause, the court must of necessity adjudicate upon it, whether it can be said in strict propriety of language to arise directly or incidentally." (3 S. T. (n.s.) p. 913.)

#### DISTINCTION BETWEEN INTERNAL PROCEEDINGS AND MATTERS AFFECTING THE RIGHTS OF NON-MEMBERS

As a result of *Stockdale v. Hansard*, the maxim of the law, found in Coke and Blackstone (and according to the latter, the "original" of the whole of the law and custom of Parliament)—the maxim "that whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House to which it relates and not elsewhere," became practically restricted to matters solely concerning the *internal* proceedings of either House.

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(1) 3 S. T. (n.s.) 912.

The judges admitted that, when a matter is a proceeding of the House, beginning and terminating within its own walls, it is obviously outside the jurisdiction of the courts (*j*). But if a proceeding of the House issues in action affecting the rights of persons exercisable outside the House (as, e.g., in the publication of a part of the proceedings of the House, or in the carrying out of an order made by the House) then the person who published or the servant who executed the order will be within the jurisdiction of the courts. If such a person pleads an order of the House as his justification, the courts will inquire whether the order is one which the House is entitled to make, not in order to bring within their jurisdiction the Members who voted for the order, or the Speaker or other officer who signed it, but in order to decide, not only whether the act complained of is duly covered by the order, but also whether the privilege claimed by the House does, as pleaded, justify the act of the person who executed its order.

In *Bradlaugh v. Gossett* it was decided that the House of Commons is not subject to the control of the courts in the administration of that part of the law which relates to its internal procedure only, and that even if its interpretation of a statute prescribing rights exercisable within its walls is erroneous, the courts have no power to interfere. For such purposes the House can "practically change or practically supersede the law." (12 Q. B. D. (1884) 271.)

Some of the implications of this principle, so fully recognized by the courts, are summarized in the chapter on Freedom of Speech (see pp. 59-65.)

#### POWER TO PUNISH FOR CONTEMPT

So far the position reached seems capable of being briefly stated as follows. The jurisdiction of a House of Parliament over its own internal proceedings is exclusive; but the courts claim jurisdiction over matters of privilege which affect the rights of persons exercisable outside Parliament. There is, however, one respect in which the courts recognize the existence in the House of a jurisdiction over persons outside Parliament, and that is in its power to punish for contempt. This recognition is subject to the qualification that, if the causes of commitment are stated on the warrant, and appear to be in respect of no established privilege, the courts have claimed the right to examine their sufficiency (*k*). In taking this view the courts have in effect treated the power of a House to commit for contempt as in all respect analogous to the power of committal enjoyed by all superior courts. This power is further discussed in pp. 89-92).

#### GENERAL CONCLUSIONS

The House of Commons claims that its admitted right to adjudicate on breaches of privilege implies in theory the right to determine the existence and extent of the privileges themselves. It has never expressly

(j) 9 Ad. & El. 193, 243; see also 12 Q. B. D. 274, *Bradlaugh v. Gossett*.

(k) See the judgment in *Burdett v. Abbot*, 14 East, p. 130; and in the case of the Sheriff of Middlesex, 11 A. & E. 273.

abandoned its claim to treat as a breach of privilege the institution of proceedings for the purpose of bringing its privileges into discussion or decision before any court or tribunal elsewhere than in Parliament (*l*). In other words, it claims to be the absolute and exclusive judge of its own privileges, and that its judgments are not examinable by any other court or subject to appeal.

On the other hand, the courts regard the privileges of Parliament as part of the law of the land, of which they are bound to take judicial notice. They consider it their duty to decide any question of privilege arising directly or indirectly in a case which falls within their jurisdiction, and to decide it according to their own interpretation of the law.

The decisions of the courts are not accepted as binding by the House in matters of privilege, nor the decisions of the House by the courts. Thus the old dualism remains unresolved. In theory "there may be at any given moment two doctrines of privilege, the one held by the courts, the other by either House, the one to be found in the Law Reports, the other in *Hansard*; and there is no way of resolving the real point at issue should the conflict arise" (*m*).

In practice, however, there is much more agreement on the nature and principles of privilege than the deadlock on the question of jurisdiction would lead one to expect.

(1) It seems to be recognized that, for the purpose of adjudicating on questions of privilege, neither House is by itself entitled to claim the supremacy over the ordinary courts of justice which was enjoyed by the undivided High Court of Parliament. The supremacy of Parliament, consisting of the king and the two Houses, is a legislative supremacy which has nothing to do with the privilege jurisdiction of either House acting singly.

(2) It is agreed that the law of Parliament is part of the law of the land, and that the judges are bound to take judicial notice of privilege.

(3) It is admitted by both Houses that, since neither House can by itself add to the law, neither House can by its own declaration create a new privilege. This implies that privilege is objective and its extent ascertainable, and reinforces the doctrine that it is known by the courts.

On the other hand, the courts admit:—

(4) That the control of each House over its internal proceedings is absolute and cannot be interfered with by the courts.

(5) That a committal for contempt by either House is in practice within its exclusive jurisdiction, since the facts constituting the alleged contempt need not be stated on the warrant of committal.

The field of agreement is thus wide. With respect to rights exercisable within a House the jurisdiction of the House is complete; and it is in practice so with respect to rights exercisable outside a House in the principal way in which the courts might come into contact with such rights, namely, in punishment for contempt or breach of privilege. The remaining opportunities for conflict with the courts are therefore narrow. Should they arise, however, the House has its remedy in recourse to

(*l*) C. J. (1837) 419.

(*m*) *Keir and Lawson, Cases on Constitutional Law*, p. 76.

legislation, just as it solved the dispute with the courts over the protection of papers published by its orders by means of the Publication of Papers Act.

Since the House of Commons has not for a hundred years refused to submit its privileges to the decision of the courts, it may be said to have given practical recognition to the jurisdiction of the courts over the existence and extent of its privileges. On the other hand, the courts have always, at any rate in the last resort, refused to interfere in the application by the House of any of its recognized privileges.

It is a remarkable fact that the modern solution of the problem was anticipated by Clarendon at the beginning of the struggle between the Houses of Parliament and the courts. "We are" he represents the Commons as saying, "and have always been confessed the only judges of our own privileges: and therefore whatsoever we declare to be our privilege is such: otherwise whoever determines that it is not so makes himself the judge of that whereof the cognizance only belongs to us." And he solves the "sophistical riddle" by showing that the proposition is only true if "rightly understood." "I say the proposition rightly understood: they are the only judges of their privileges, that is, upon the breach of those privileges which the law had declared to be their own, and what punishment is to be inflicted upon such breach. But there can be no privilege of which the law doth not take notice, and which is not pleadable by, and at law" (n).

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(n) History of the Rebellion, Book iv, quoted by McIlwain, High Court of Parliament, p. 240-1.

## CHAPTER X

# PRIVILEGE OF THE HOUSE OF COMMONS WITH RESPECT TO ITS OWN CONSTITUTION

### EXTENT OF THE PRIVILEGE

It is a privilege of the House of Commons to provide for its own proper constitution as established by law.

The privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt.

The right of the Commons to determine all matters touching the election of their own members has been regularly claimed and exercised since the reign of Queen Elizabeth and probably earlier, although such matters had been ordinarily determined in chancery. Their exclusive right to determine the legality of returns and the conduct of returning officers making them was fully recognized by the courts in the case of *Barnardiston v. Soame* 1674 (a) upheld by the House of Lords in 1689 (b) and by other contemporary cases (c). The Commons' jurisdiction in determining the right of election was further acknowledged by the Act 7 & 8 Will. 3 c. 7. But in regard to the right of electors the cases of *Ashby v. White* and *R. v. Paty* (d) led the House of Lords to draw a distinction between the right of electors and the right of the elected. The one being a freehold by common law, and the other a temporary right to a place in Parliament (e). In the eighteenth century, however, the Commons continued to exercise the sole right of determining whether electors had the right to vote (f), while inquiring into the conflicting claims of candidates for seats in Parliament; until, in 1868, the House delegated its judicature in controverted elections to the courts of law, while retaining its jurisdiction over cases not otherwise provided for by statute.

Whenever a doubt arises as to the qualification of any of its Members the House also has the right, which it has frequently exercised, to inquire into the matter and decide whether a new writ ought to be issued. It used to be the practice, particularly in the eighteenth century, for Members who held or had accepted offices of profit under the Crown which might possibly involve the vacation of their seats to bring their

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(a) See p. 152 for a description of the case.

(b) 6 State Trials, 1092 & 1119

(c) Onslow, 1680, 2 Vent. 37, 3 Lev. 39; and *Prideaux v. Morris*, 1702, 2 Salk. 502, 1 Lut. 82, 7 Mod. Rep. 13.

(d) For description see pp. 155 and 156

(e) See 3 Hatsell, Appendix 1.

(f) E.g., Case of the Pembroke electors (C. J. (1766-68) 211, 229, 279, 293).

cases before the House itself with a view to securing its decision. In such cases the House when seized of the matter either gave its decision forthwith after debate or referred the matter to a select committee. At present the practice is to refer the matter in the first instance to a select committee without, as a rule, any previous debate in the House. Whichever way the House proceeds, the decision is entirely within its hands, and there would, of course, be no question of an appeal to a court of law.

#### SCOPE OF CHAPTER

The issue of writs and the trial of controverted elections are discussed in detail in this chapter.

As the subject of qualifications for membership is most frequently approached from the negative angle of disqualification it is not further discussed in this chapter, since the general subject of disqualification, which also concerns the House of Lords, is dealt with elsewhere (see p. 191).

### ISSUE OF WRITS

Whenever vacancies occur in the House of Commons from any legal cause, after the original issue of writs for a new Parliament by the Crown, writs are issued out of Chancery by a warrant from the Speaker, which he issues, when the House is sitting, upon the order of the House of Commons. The causes of vacancy are the death of Members or their succession to a peerage, the acceptance of office under the Crown, the elevation of Members to the peerage, bankruptcy, lunacy, the establishment of any other legal disqualification for sitting and voting in the House of Commons, and the determination of election judges that elections or returns are void. Whenever any question is raised affecting the seat of a Member and involving matters of doubt, either in law or fact, it is customary to refer it to the consideration of a committee (*g*).

#### VACANCIES DURING A SESSION

When the House is sitting, and the death of a Member, his elevation to the peerage (*h*), or other cause of vacancy, is known, Mr. Speaker is ordered by the House, upon a motion made by any Member, to issue his warrant to the Clerk of the Crown for a new writ for the place represented by the Member whose seat is thus vacated.

#### PERIOD FOR PRESENTING PETITIONS

Where a vacancy has occurred prior to, or immediately after, the first meeting of a new Parliament, the writ will not be issued until the time

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(*g*) *E.g.*, case of Mr. Wynn (Stewardship of Denbigh), C. J. (1839) 58; of Mr. Whittle Harvey, registrar of hackney carriages, *ibid.* 29; of Mr. Hawes, *ibid.* (1847-48) 388 (see p. 342); of Baron Rothschild, as a government contractor, C. J. (1854-55) 325 (see p. 215); of Sir Bryan O'Loughlen, C. J. (1878) 376 (see p. 206); of Member holding a contract with the Secretary of State for India in Council, C. J. (1912-13) 419 (see p. 214); of succession to a peerage (Earldom of Selborne), C. J. (1895) 205 (see p. 195); of the holding of a single election in a case of two writs being issued, C. J. (1895) 61 (see p. 182); of the grant of the Chiltern Hundreds to a Member who has succeeded to a peerage, C. J. (1894) 373 (see p. 179, *n*), and of Members holding office of profit, C. J. (1924-25) 210.

(*h*) See Parl. Deb. (1835) 26, c. 839; 2 Hatsell, 65, *n*.



for presenting election petitions has expired (see p. 185 *n.* (*p*)). Nor will a writ be issued, if the seat which has been vacated be claimed on behalf of another candidate.

In December, 1852, several Members, against whose return election petitions were pending, accepted office under the Crown. After much consideration, it was agreed that where a void election only was alleged, a new writ should be issued (*i*); and again, in 1859 and in 1880, the same rule was adopted (*j*).

Where the seat is claimed, it has been ruled that the writ should be withheld until after the trial of that claim (*k*), or until the petition has been withdrawn (*l*).

In 1859, Viscount Bury accepted office under the Crown, while a petition against his return for Norwich, on the ground of bribery, was pending; and, as his seat was not claimed, a new writ was issued. Being again returned, a petition was presented against his second election, claiming the seat for another candidate. The petition against the first election came on for trial, and the committee reported that the sitting members, Lord Bury and Mr. Schneider, had been guilty, by their agents, of bribery at that election. By virtue of that report, Lord Bury, under the Corrupt Practices Prevention Act, became incapable of sitting or voting in Parliament, or, in other words, ceased to be a member of the House; but as a petition against his second return, claiming the seat, was then pending, a new writ was not issued (*m*). This position of affairs illustrated the propriety of issuing the writ, in the first case, on the acceptance of office by Lord Bury, as the rights of all parties were nevertheless secured. On the meeting of a new Parliament, in November, 1852, the seat of a deceased Member was claimed: but the petition was withdrawn the day after the expiration of the time for receiving election petitions, and the writ was immediately issued (*n*).

The claim of one seat for a constituency which returns two Members does not interfere with the issue of a writ, on a vacancy occurring in the other seat (*o*).

#### VACANCY BY PEERAGE

**Peer by descent.**—If a Member becomes a peer by descent, a writ is usually moved soon after the death of his ancestor is known; though, occasionally, some delay occurs in obtaining the writ of summons, which ought strictly to precede the issue of the writ—that proceeding being founded upon the alleged fact that the Member has been called up to the House of Peers (*p*).

On 15 February, 1809, the House being informed that no writ of summons had been issued to General Bertie, calling him to the House of Peers, as

(*i*) Southampton and Carlow writs, 29 Dec. 1852.

(*j*) Sandwich and Norwich writs, 22 June, 1859; Parl. Deb. (1859) 154, c. 450, 454. Chester writ, 3 May, 1880, C. J. (1880) 125.

(*k*) Athlone Election, 1859.

(*l*) Louth Election (Mr. Chichester Fortescue), 1866.

(*m*) Parl. Deb. (1859) 155, c. 865.

(*n*) Durham Election (Mr. Grainger), C. J. (1852-53) 161.

(*o*) Lichfield writ (Sir G. Anson), 1841, C. J. (1841) 526, 566; First Durham Election petition, 1852-53, *ibid.* (1852-53) 151.

(*p*) C. J. (1844) 236; Parl. Deb. (1844) 74, c. 108; C. J. (1847-48) 162; *ibid.* (1852) 193, &c. See also First Report of Select Committee on House of Commons (Vacating of Seats), H. C. 272, p. iii. (1895)

Earl of Lindsey, ordered a supersedeas to the writ which had been issued for the borough of Stamford (*g*). On 10 January, 1811, a new writ was issued in the room of Lord Dursley, "now Earl of Berkeley," without stating that he was called up to the House of Peers. His claim to the Berkeley peerage, however, not being admitted by the Lords, he afterwards sat as Colonel Berkeley, until created Lord Seagrave in 1831 (*r*).

If a Member on succeeding to a peerage delays to apply for a writ of summons, the House of Commons will, if it thinks fit, inquire into his succession to the peerage and, on this being established, will order a new writ to be issued for the constituency of the Member who has succeeded to the peerage (*s*).

No delay is necessary in the case of a Peer of Scotland, to whom no writ of summons is issued.

On 21 February, 1840, a new writ was issued for Perthshire, in the room of Viscount Stormont, "now Earl of Mansfield, and Viscount Stormont in the kingdom of Scotland," though it was allowed on all hands that no writ of summons had then been issued to his lordship, in respect of his English peerage (*t*). And again, in 1861, a new writ was issued for Aberdeenshire, in the room of Lord Haddo, "now Earl of Aberdeen in the peerage of Scotland," before he had received his writ of summons in respect of his English peerage (*u*).

**Peer by creation.**—If a Member be created a Peer, his seat is not vacated until the letters patent conferring the dignity have passed the great seal (*a*). When it is advisable to issue the writ without delay in the case of a Member created a Peer, the Member accepts the Chiltern Hundreds before his patent is made out (*b*) (see p. 211).

#### PRECEDENCE OF MOTION FOR NEW WRIT

A new writ is moved as a matter of privilege, without notice (see p. 327) (*c*).

(*g*) C. J. (1831-32) 49.

(*r*) C. J. (1810-11) 31; Parl. Deb. (1810-11) 18, c. 807; Colchester, ii. 306, 340.

(*s*) Case of the Earl of Selborne, C. J. (1895) 199, 205, 223; Parl. Deb. (1895) 33, c. 1058; Report of the Select Committees on House of Commons (Vacating of Seats) and Earldom of Selborne, H. C. 272, p. iii, and 302, p. 3. (1895).

(*t*) C. J. (1840) 105; Parl. Deb. (1840) 52, c. 435. When the lord chancellor is assured of a person's succession to a peerage by proofs of the late peer's burial and of the new peer's descent, &c., a writ of summons is issued, Select Committee on House of Commons (Vacating of seats), H. C. 278, pp. 18, 19 (1894). In some cases the customary delay in issuing a writ of summons to the collateral heir when a peer dies leaving a widow (*ibid.* pp. 4, 19) has not been observed, Earl of Pembroke, L. J. (1896) 15; Duke of Devonshire, L. J. (1898) 101, 135.

(*u*) C. J. (1861) 4.

(*a*) Sir H. Vivian, Parl. Deb. (1893-94) 13, c. 332, 540.

(*b*) C. J. (1880) 328; *ibid.* (1907) 308; *ibid.* (1908) 47, 160, 238, 292. As to the grant of the Chiltern Hundreds or Manor of Northstead to a Member, who has succeeded to a peerage, see C. J. (1895) 218; *ibid.* (1911) 179; *ibid.* (1912-13) 395, 495, 533; but see also Reports of Select Committees on House of Commons (Vacating of Seats), H. C. 278 (1894) and 272 (1895).

(*c*) For instances of new writs moved after the interruption of business, see C. J. (1896) 133; *ibid.* (1902) 74; *ibid.* (1905) 300; at end of the orders of the day on a Friday before the adjournment of the House under S.O. No. 2, *ibid.* (1913) 141. A new writ has also been moved as a matter of privilege at the conclusion of government business, although an order was in force directing the Speaker to adjourn the House without question put at the conclusion of government business each day, C. J. (1895) 230, 389; Parl. Deb. (1895) 36, c. 766-68; on the motion of an unofficial Member, C. J. (1907) 448. See also p. 362, n. (*a*).

An amendment to a motion for a new writ postponing the date of its issue has been ruled out of order (*d*).

It was resolved, 5 April, 1848, "that in all cases where the seat of any Member has been declared void on the grounds of bribery or treating, no motion for the issue of a new writ shall be made without previous notice being given in the votes" (*e*). When such notice was dropped, it was required to be renewed like other dropped notices (*f*). In 1853 and 1854, it was ordered that no such motion should be made without seven days' previous notice in the votes (*g*). According to later usage, only two clear days' previous notice has been required; and such notices are appointed for consideration before the orders of the day and notices of motions (*h*).

#### SUPERSEDEAS TO WRITS

If doubts should arise concerning the fact of the vacancy, the order for a new writ should be deferred until the House may be in possession of more certain information; and if, after the issue of a writ, it should be discovered that the House had acted upon false intelligence, the Speaker will be ordered to issue a warrant for a supersedeas to the writ.

Thus on 29 April, 1765, a new writ was ordered for Devizes, in the room of Mr. Willey, deceased. On the 30th it was doubted whether he was dead, and the messenger of the great seal was ordered to forbear delivering the writ until further directions. Mr. Willey proved to be alive, and on 6 May a supersedeas to the writ was ordered to be made out (*i*). In several more recent cases, when the House has been misinformed, or a writ has been issued through inadvertence, the error has been corrected by ordering the Speaker to issue his warrant to the Clerk of the Crown to make out a supersedeas to the writ (*j*). A new writ having been issued on 6 July, 1880, for Berwick-upon-Tweed, in the room of Mr. Strutt, who had succeeded to the Belper peerage, a supersedeas to that writ was ordered on the 8th, as delays had arisen in completing the formalities incident to his being called to the upper House (*k*).

#### ISSUE OF WARRANTS BY THE SPEAKER DURING THE RECESS

When vacancies occur by death, by elevation to the peerage, or by the acceptance of office, the law provides for the issue of writs during a recess,

(*d*) Parl. Deb. (1895) 36, c. 768.

(*e*) C. J. (1847-48) 432.

(*f*) Parl. Deb. (1847-48) 99, c. 1289.

(*g*) C. J. (1852-53) 315; *ibid.* (1854) 388.

(*h*) C. J. (1857) 283; *ibid.* (1875) 23; *ibid.* (1880) 213; *ibid.* (1882) 20; *ibid.* (1886) 149; *ibid.* (1893-94) 14; *ibid.* (1901) 15; *ibid.* (1906) 226; *ibid.* (1910) 161; *ibid.* (1911) 49. See also debate on the issue of new writs, 31 Jan. 1893, Parl. Deb. (1893-94) 8, c. 62. The usual resolution was not moved in sessions 1907, 1923 and 1924, but in 1907 and 1924 in the case of the new writs for Worcester and Oxford respectively, one clear day's notice was given, and the motions were made as a matter of privilege before the orders of the day were entered upon, the writ for Worcester being negatived, C. J. (1907) 14, Parl. Deb. (1907) 169, c. 317; C. J. (1924) 202.

(*i*) See 2 Hatsell, 80, *n.*; 16 Parl. Hist. 95; C. J. (1765-66) 391, 404; see also cases of the city of Gloucester, 19 Dec. 1702, and of Mr. Vansittart, supposed to have been lost at sea, 17 Parl. Hist. 322; C. J. (1770-72) 546.

(*j*) C. J. (1809) 48; *ibid.* (1826) 223; *ibid.* (1830-31) 134, 182; *ibid.* (1851) 12 (Dungarvan writ).

(*k*) C. J. (1880) 280, 286; Parl. Deb. (1880) 253, c. 1918.

due to a prorogation or adjournment, without the immediate authority of the House, in order that a representative may be chosen without loss of time, by the place which is deprived of its Member.

#### CAUSES OF VACANCIES

**Death or peerage.**—By the Recess Elections Act, 1784, as amended by the Elections in Recess Act, 1863, on the receipt of a certificate, under the hands of two Members, that any Member has died, or that a writ of summons under the great seal has been issued to summon him to Parliament as a Peer (*l*), either during the recess or previously thereto, the Speaker is required to give notice forthwith in the *London Gazette* (which is to be acknowledged by the publisher); and after six days from the insertion of such notice (*m*), to issue his warrant to the Clerk of the Crown to make out a new writ. The Speaker may not issue his warrant during the recess unless the return of the late Member has been brought into the office of the Clerk of the Crown fifteen days before the end of the last sitting of the House; or unless the application is made so long before the next meeting of the House for despatch of business, that the writ can be issued before the day of meeting (*n*). He may not issue a warrant in respect of any seat that has been vacated by a Member against whose election or return a petition was depending at the last prorogation or adjournment.

**Acceptance of office.**—Subject to the same provisions by the Election of Members during Recess Act, 1858, as amended by the Elections in Recess Act, 1863, the Speaker is required, on the receipt of a certificate from two Members, together with a copy of the *Gazette* containing the appointment, and a notification from the Member himself, to issue his warrant for a new writ, during a recess, in the room of any Member who, since the adjournment or prorogation, has accepted any office whereby he has, either by the express provision of any Act of Parliament or by any previous determination of the House of Commons vacated his seat (see p. 198). If, however, it should appear doubtful whether such office has the effect of vacating the seat, the Speaker may reserve the question for the decision of the House. (See also p. 212).

**Bankruptcy.**—By the Bankruptcy Act, 1883, s. 33, similar powers are given to the Speaker in the event of a seat having become vacant by the bankruptcy of a Member, upon the issue of the certificate of the court, stating that the disqualification inflicted by the Act had not been removed (see p. 196).

**Lunacy.**—A new writ for the election of a Member to fill a seat which has become vacant under the procedure prescribed by the Lunacy

(*l*) No writ of summons being directed to a Scotch or Irish peer, this Act does not extend to such cases; Marquess of Tweeddale, Jan. 1879.

(*m*) In the calculation of the six days, the day on which the notice appeared in the *Gazette*, and any intervening Sunday, are reckoned; i.e. upon notice in a Tuesday's *Gazette*, the writ is issued on the following Monday.

(*n*) That is to say, the six days' provision (see note *m*) must have been complied with.

(Vacating of Seats) Act, 1886 (see p. 194), could not apparently be issued during a recess.

#### APPOINTMENT OF MEMBERS TO ISSUE WRITS

At the beginning of each Parliament the Speaker is required to appoint a certain number of Members, not exceeding seven and not less than three, to execute his duties in reference to the issue of writs, in case of his own death, the vacation of his seat, or his absence from the realm. This appointment stands good for the entire Parliament, unless the number should be reduced to less than three ; in which case the Speaker is required to make a new appointment, in the same manner as before (o). This appointment is ordered to be entered in the journals, and published in the *London Gazette* ; and the instrument is to be preserved by the Clerk of the House, and a duplicate by the Clerk of the Crown

#### ISSUE AND RETURN OF WRITS

##### MANNER OF ISSUE OF WRITS

For any place in Great Britain, the Speaker's warrant is directed to the Clerk of the Crown in Chancery : and for any place in Northern Ireland, to the Governor of Northern Ireland. On the receipt of the Speaker's warrant, the writ is issued by the Clerk of the Crown, and transmitted through the post-office in pursuance of the provisions of Part II of the Parliament (Elections and Meeting) Act, 1943 (p). Neglect or delay in the delivery of the writ, or any other violation of the Act, is a misdemeanour ; and in the event of any complaint being made the House will also inquire into the circumstances (q).

In 1840, two writs were issued for Perthshire, instead of one, and the Clerk of the Crown was examined in relation to the occurrence (r).

At the end of the session in 1894 two writs were issued on the same day for the borough of Leicester, a constituency returning two Members, as the sitting Members had accepted the Chiltern Hundreds and Manor of Northstead. The returning officer held a single election to fill the vacancies. His action and the validity of the returns made by him were raised as a matter of privilege at the commencement of the next session and a select committee was appointed to inquire into the matter. The committee reported that the course pursued by the returning officer was erroneous in point of procedure and that the election was not duly held, but recommended that the House should take no action in the matter as the returning officer had acted in the exercise of an honest judgment for the convenience, and with the consent, of all the parties directly concerned in the election, and without any intention of influencing the result (s).

##### CORRECTION OF ERROR IN RETURN

If any error should appear in the return to a writ, such as a mistake in

(o) The Recess Elections Act, 1784, ss. 5, 6.

(p) See S.R. & O. 1944 (No. 334) 1, p. 605.

(q) Glasgow writ, 1837, C. J. (1837-38) 410, 418.

(r) C. J. (1840) 122, 127.

(s) C. J. (1894) 401 ; *ibid.* (1895) 61 ; Parl. Deb. (1895) 30, c. 54 ; Report of Select Committee on Leicester writs, H. C. 247, p. vii (1895). For cases in which one writ has been moved to fill both vacancies in a constituency returning two Members, see Westbury, C. J. (1819-20) 485 ; Oldham, *ibid.* (1899) 291 ; Stockport, *ibid.* (1920) 60.

the name of the Member returned (*t*), or in the date of the return (*u*), or in the division of the county for which the return is made (*a*), evidence is given of the nature of the error, either by a member of the House, or by some other person who was present at the election or is otherwise able to afford information; and the Clerk of the Crown is ordered to attend and amend the return.

On 18 August 1845, the Mayor of Barnstaple annexed to the writ, which he returned to the Clerk of the Crown, a certificate instead of an indenture (*b*); and on being made aware of his error he forwarded on 25 August, an indenture dated on that day. As this date differed from that of the return, the Clerk of the Crown felt unable to annex the indenture to the writ, but made a special certificate to the House of the facts. This was considered on the 13 December, when, by the order of the House, the Members for Barnstaple were called to the table, and took the oath (*c*).

#### FAILURE TO MAKE RETURN TO WRIT

If no return be made to a writ in due course, the Clerk of the Crown is ordered to attend and explain the omission; when, if it should appear that the returning officer, or any other person, has been concerned in the delay he will be summoned to attend the House; and such other proceedings will be adopted as the House may think fit (*d*).

In the course of the general election of December, 1910, the writ for the borough of Portsmouth was mislaid by the returning officer, so that he was unable to endorse the writ with the names of the Members who had been returned. The returning officer made a statutory declaration to this effect and certified the names of the Members returned. This declaration was sent by the Clerk of the Crown to the Speaker, who informed the House of its contents. An instruction was given by the House to the Clerk of the Crown to receive the names mentioned in the returning officer's statutory declaration as if they had been endorsed on the writ and to amend his certificate to the House (*i.e.* the Return Book, see p. 273) accordingly (*e*).

#### MEMBERS RETURNED FOR TWO PLACES

At the commencement of each session, the House agrees to resolutions dealing with the case of Members who are returned for two or more places in any part of the United Kingdom. This order regulates the

(*t*) Newport (Hants.) 1831, Mr. Hope Vere, C. J. (1831) 578; Kirkcaldy return, 1875, Sir George Campbell, *ibid.* (1875) 165; Perth county return, 1878, Colonel Moray, *ibid.* (1878) 53; Poole, *ibid.* (1884) 175; Mid Antrim, *ibid.* (1886) 8; Longford, *ibid.* (1887) 54; Birmingham, *ibid.* (1889) 149; Kirkcaldy, *ibid.* (1892) 104; Monaghan (north and south divisions), *ibid.* (1895) 348; Buckingham (northern division), *ibid.* (1911) 6. In the last case the Member himself directed the attention of the House to the error.

(*u*) Carlow county, 1841, "November" being inserted instead of "December," C. J. (1841) 3.

(*a*) Northampton county, 1846, C. J. (1846) 207; Worcester county (eastern division), 1859, C. J. (1859) 74; Parl. Deb. (1859) 152, c. 855.

(*b*) The ancient form of an indenture was abolished by the Ballot Act, 1872, Sch. 1, s. 44.

(*c*) C. J. (1854-55) 4, 7; H. C. 2 (1854-55).

(*d*) Waterford writ, 1806, C. J. (1806) 169, 175; Parl. Deb. (1806) 6, c. 536, 562, 751; Great Grimsby, 1831, C. J. (1831) 758, 762, &c.; Parl. Deb. (1831) 6, c. 95, 159, 294, 460.

(*e*) C. J. (1911) 6.

manner of choosing for which place a Member will sit when he has been returned for more than one, and his withdrawal from the House, if debate arises upon the matter of his election (see p. 141-2). When the time limited for presenting petitions to the court against his return has expired, and no petition has been presented, he is required to make his election within a week, in order that his constituents may no longer be deprived of a representative (*f*). This election may either be made by the Member in his place (*g*) or by a letter addressed to the Speaker (*h*).

When a petition has been presented against his return for one place only, he cannot elect to serve for either (*i*). He cannot abandon the seat petitioned against, which may be proved to belong of right to another, and thus render void an election which may turn out to have been good in favour of some other candidate; neither can he abandon the other seat; because if it should be proved that he is only entitled to sit for one, he has no election to make, and cannot give up a seat without having incurred some legal disqualification, such as the acceptance of office, or bankruptcy (*j*). Upon this principle, on 24 May, 1842, Mr. O'Connell, who had been chosen for the counties of Cork and Meath, elected to sit for the former, directly after the report of the election committee, by which he was declared to have been duly elected for that county (*k*).

#### DOUBLE RETURNS

Where the votes are equal a returning officer, by s. 2 of the Ballot Act, 1872, may, if on the register of voters, vote himself, and so turn the scale and avoid the necessity of making a double return. But as the Act does not provide for the contingency of his either not being on the register, or of not voting, although on the register, it is still his duty to make a double return upon the happening of either contingency. In no other instance should a double return be now made (*l*). A double return is made by indorsing two certificates on the writ (*m*).

In such cases both Members may claim to be sworn and take their seats (H. C. 256, p. 3 (1847-8)), but after the election of the Speaker neither of them can vote until the return is amended, which can only be done after a petition has been brought forward to determine which candidate had secured election (e.g. C. J. (1852-53) 70, 429, 432; see also p. 186).

By an order of the House passed at the beginning of every session,

(*f*) C. J. (1847-48) 99, 100.

(*g*) Mr. O'Connell, 1842, C. J. (1842) 302; Mr. Gathorne Hardy, 1866, *ibid.* (1866) 104; *ibid.* (1886) 28; *ibid.* (1887) 4.

(*h*) C. J. (1847-48) 99; *ibid.* (1874) 12; *ibid.* (1880) 128; *ibid.* (1886) 9, 26, 318; *ibid.* (1887) 5; *ibid.* (1892) 413; *ibid.* (1895) 341; *ibid.* (1896) 4; *ibid.* (1910) 6.

(*i*) Case of Mr. O'Connell, 1841, C. J. (1841) 564; Parl. Deb. (1841) 59, c. 503; Mr. Sexton, 1886, *ibid.* (1886) 308, c. 168.

(*j*) At the general election of December, 1910, Mr. Hazleton was returned for North Galway and North Louth. As a petition was presented against his return for the latter place, he did not make any election. As a result of the petition his election for North Louth was declared to be void, C. J. (1911) 51, 64.

(*k*) C. J. (1842) 302. •

(*l*) For the former practice see C. J. (1866) 436, 486, and Rogers on Elections, 1922 edition, Vol II, p. 182.

(*m*) Rogers, 1928 edition, Vol II, p. 112. For cases see *ibid.* pp. 112-3.

all Members returned upon double returns must withdraw until their returns are determined.

## TRIAL OF CONTROVERTED ELECTIONS.

### FORMER PROCEDURE

Before the year 1770, controverted elections were tried and determined by the whole House of Commons, as mere party questions, upon which the strength of contending factions might be tested (*n*).

In order to prevent so notorious a perversion of justice, the House consented to submit the exercise of its privilege to a tribunal constituted by law, which, though composed of its own Members, should be appointed so as to secure impartiality, and the administration of justice according to the laws of the land, and under the sanction of oaths. The principle of the Grenville Act, and of others which were passed at different times since 1770, was the selection by lot of committees for the trial of election petitions. Partiality and incompetence were, however, generally complained of in the constitution of committees appointed in this manner; and in 1839, an Act was passed establishing a new system, upon different principles, increasing the responsibility of individual Members, and leaving but little to the operation of chance. This principle was maintained, with partial alterations of the means by which it was carried out, until 1868, when the jurisdiction of the House in the trial of controverted elections was transferred by statute to the courts of law.

### PRESENT PROCEDURE

By the Parliamentary Elections Act, 1868, the Parliamentary Elections and Corrupt Practices Act, 1879, and the Supreme Court of Judicature Act, 1881, the trial of controverted elections is confided to two judges, selected as regards England, from the King's Bench Division of the High Court of Justice; and as regards Scotland, from the Court of Session. In the case of Northern Ireland, the judges are selected from the High Court of Justice in Northern Ireland (*o*). Petitions complaining of undue elections and returns or of corrupt or illegal practices are presented to these courts, instead of to the House of Commons as formerly, and are tried by two judges of those courts (*p*) within the county or borough concerned. The House has no cognizance of these proceedings until their determination, when the judges certify their determination, in writing, to the Speaker, which is final to all intents and purposes (*q*). The judges are also to report whether any corrupt or illegal practices (*r*)

(*n*) E.g., Sir Robert Walpole's resignation (1741) in consequence of an adverse vote upon the Chippenham Election petition; see also 1. Cav. Deb. 476, 505; May, Const. Hist. i. 243.

(*o*) Government of Ireland Act, 1920, s. 41 (1).

(*p*) Parliamentary Elections Act, 1868, as amended by the Parliamentary Elections and Corrupt Practices Act, 1879. For statutory provisions relating to time for petitioning, see Rogers on Elections (1928 edit.) vol. II, ch. vi.

(*q*) On the 1st June, 1874, Mr. O'Donnell (lately Member for Galway) appeared at the bar and claimed to make a statement before the certificate of the judge, by which he was unseated, was read; but the Speaker informed him that it appeared from the judge's certificate that he was disqualified from sitting, and that he therefore was not entitled to be heard, C. J. (1874) 184.

(*r*) For the application to illegal practices of the statutory provisions relating to corrupt practices, see the Corrupt and Illegal Practices Prevention Act, 1883, ss. 11, 12.



have been committed with the knowledge and consent of any candidate ; the names of any persons proved guilty of such practices ; and whether corrupt practices have extensively prevailed at the election (s). They may also make a special report as to other matters which, in their judgment, ought to be submitted to the House. Provision is also made for the trial of a special case, when required, by the court itself, which is to certify its determination to the Speaker. The judges are also to report the withdrawal of an election petition to the Speaker, with their opinion whether the withdrawal was the result of any corrupt arrangement. By s. 5 of the Corrupt and Illegal Practices Prevention Bill, 1883, the election court is directed also to report to the Speaker whether candidates at elections have been guilty by their agents of corrupt practices.

#### JUDGES' CERTIFICATES AND REPORTS

All such certificates and reports are communicated to the House by the Speaker, and are treated like the reports of election committees under the former system. They are entered in the journals ; and orders are made for carrying the determinations of the judges into execution. A report that corrupt practices have extensively prevailed is equivalent to the like report from an election committee, for all the purposes of the Election Commissioners Act, 1852 for further inquiry into such corrupt practices (t). Where there is a double return (see p. 184), and notice is given by one of the parties that he does not intend to defend his return, a report is made to the Speaker, and the return is amended accordingly. This Act also makes further provision for the punishment of corrupt practices at elections.

#### PROCEEDINGS OF THE HOUSE IN MATTERS OF ELECTION

A few words will suffice to explain the proceedings of the House, so far as its jurisdiction is still exercised in matters of election. It being enacted by s. 50 of the Parliamentary Elections Act, 1868, that "no election or return to Parliament shall be questioned except in accordance with the provisions of this Act," doubts were expressed whether this provision would not supersede the jurisdiction of the House, in determining questions affecting the seats of its own Members, not arising out of controverted elections. It is plain, however, that this section applied to the questioning of returns by election petitions only. Under the procedure in force before the Parliamentary Elections Act, 1868, when returns were questioned by petition, the matter was determined by the statutory tribunal ; otherwise the House uniformly exercised its constitutional jurisdiction. This continued to be the position of the House, although the jurisdiction of its election committees has been transferred to the judges.

In the autumn of 1868, an election petition had been presented to the Court of Session in Scotland, complaining of the election of Sir Sydney Waterlow for the county of Dumfries, on the ground of his holding a govern-

(s) The Parliamentary Elections Act, 1868, s. 24, directs that notes of evidence given at an election trial shall be taken by the shorthand writer of the House of Commons (see p. 232), whose transcript shall be sent to the Speaker with the judge's certificate. The shorthand writer does not report proceedings on the withdrawal of a petition.

(t) Parliamentary Elections Act, 1868, s. 15.

ment contract. In the ensuing session, however, the petition having been withdrawn, a select committee was appointed to "consider whether Sir Sydney Waterlow is disqualified from sitting and voting as a Member of this House, under the statute 22 Geo. III, c. 45." On receiving the report of this committee, which declared him disqualified, a new writ was issued for the county of Dumfries (*u*).

The House is, in fact, bound to take notice of any legal disabilities affecting its Members, and to issue writs in the room of Members adjudged to be incapable of sitting (*a*).

In 1870, O'Donovan Rossa, a convict then in prison, and sentenced to penal servitude for life, for felony under the Treason-Felony Act, had been returned as Member for the county of Tipperary. The House took action, and ordered the issue of a new writ (*b*). The case of John Mitchel, in 1875, further illustrates the position of the House in relation to elections and the legal disqualifications of its Members. John Mitchel had been returned for the county of Tipperary without a contest. No question could, therefore, arise as to the election or return, the sole matter for determination being the qualification of the Member. It was notorious that he was an escaped convict and had not completed the term of transportation to which he had been sentenced or received a pardon under the great seal. The facts of the case were proved, and his legal disqualification was clearly established to the satisfaction of the House. A new writ was accordingly issued and John Mitchel was again returned. But, on this occasion, there had been a contest, and the House therefore left the merits of the election and return to be determined under the Parliamentary Elections Act. Mr. Moore, the other candidate, having given due notice of the disqualification, proved his claim to the seat and the return was amended accordingly (*c*). On the 28th February, 1882, the House resolved that Michael Davitt, having been adjudged guilty of felony and sentenced to penal servitude for fifteen years, and being then imprisoned under such sentence, was incapable of being elected or returned as a Member (*d*). A similar resolution was agreed to on the 20th August, 1895, in the case of John Daly, who had been adjudged guilty of felony and sentenced to penal servitude for life (*e*); while on the 2nd March, 1903, a new writ was ordered for the city of Galway in the room of Arthur Alfred Lynch, who had been adjudged guilty of high treason (*f*). In such cases as these, the jurisdiction and duty of the House cannot be questioned, as the incapacity of a felon is expressly declared by statute (*g*).

A petition relating to an election, but not questioning the return of the sitting Member, may properly be received (*h*).

#### PROCEEDINGS OF HOUSE UPON DETERMINATION OF ELECTION TRIALS

Where it has been determined that the sitting Member was not duly elected (*i*), and that some other candidate was duly elected, and ought

(*u*) C. J. (1868-9) 12, 43, 82, 88.

(*a*) C. J. (1839) 48; *ibid.* (1847-48) 102.

(*b*) C. J. (1870) 27, Parl. Deb. (1870) 199, c. 122; and see p. 197.

(*c*) C. J. (1875) 49, 52, 235, 239, Parl. Deb. (1875) 222, c. 492.

(*d*) C. J. (1882) 77.

(*e*) C. J. (1895) 353.

(*f*) C. J. (1903) 40.

(*g*) 33 & 34 Vict. c. 23, s. 2. See Parl. Deb. (1882) 266, c. 1842, and especially the speech of the attorney-general.

(*h*) Parl. Deb. (1868-69) 194, c. 1185.

(*i*) No notice can be taken of a determination until reported to the House. See Denison, 192.

to have been returned, the Clerk of the Crown is ordered to attend, and amend the return (*j*), by substituting the name of the duly elected candidate for the name of the other candidate (*k*). In the case of a double return, the Clerk of the Crown is ordered to attend and amend the return, by erasing out the name of one of the parties, and what relates to him, in the return (*l*). When the election is void, a new writ is ordered, unless the House shall think fit to suspend its issue.

In the case of the Wigton election, 1874, the judge reported that the Right Hon. John Young was duly elected: but, it appearing that since his election he had been appointed a judge of the Court of Session, in Scotland, a new writ was issued (*m*).

#### SPECIAL REPORTS FROM THE JUDGES

Where there have been special reports concerning bribery (*n*) or riots at elections (*o*); the conduct of returning officers (*p*); undue influence, and spiritual intimidation (*q*); the alteration of the poll (*r*); the absence, misconduct, or perjury of witnesses (*s*); defects or uncertainty in the law (*t*); the propriety of suspending the writ (*u*); or any other exceptional circumstances (*a*); the House has taken such measures as were required by law or usage, or as appeared suitable to the occasion. It has been usual, in such cases, to order a copy of the judgment delivered by the judge, and the minutes of evidence, to be laid before the House.

**Extensive corrupt practices.**—By the Corrupt Practices Prevention Act, 1863, election committees were required to report whether corrupt practices had extensively prevailed, and consequent provision was made for the institution of prosecutions by the Attorney-General. This duty is now laid by s. 45 of the Corrupt and Illegal Practices Prevention Act, 1883, upon the Director of Public Prosecutions, who, when informed that corrupt or illegal practices have prevailed in any election, shall, subject to the regulations under the Prosecution of Offences Act, 1879, make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require; and thus the intervention of the

(*j*) An amendment to the question for the attendance of the Clerk of the Crown has been refused by the Speaker, H. C. Deb. (1911) 24, c. 1253.

(*k*) Tipperary Election, 27th May, 1875, C. J. (1875) 236; Evesham Election, 1881, *ibid* (1881) 5; Londonderry City Election, 1887, *ibid* (1887) 4; York, East Riding, Election, 1887, *ibid*. 5; Exeter Election, 1911, *ibid*. (1911) 162.

(*l*) Thetford Election, C. J. (1842) 203; Montgomery Election, *ibid*. (1847-48) 218; Dumfries Election, *ibid*. (1866) 156; Horsham Election, *ibid*. (1868-69) 173; South Northumberland Election, *ibid*. (1878) 333; Saint Andrew's District of Burghs Election, *ibid*. (1886) 46.

(*m*) C. J. (1874) 187, 195.

(*n*) Peterborough, 1853, C. J. (1852-53) 826.

(*o*) Drogheda petition, 1857, C. J. (1857) 383; Limerick city petition, 1859, *ibid*. (1859) 338.

(*p*) Helston Election, 1866, C. J. (1866) 436.

(*q*) Mayo petition, 1857, C. J. (1857) 307; Galway County Election, 1872, *ibid*. (1872) 258.

(*r*) C. J. (1859) 330, 350; *ibid*. (1860) 167.

(*s*) C. J. (1860) 94, 167, etc.

(*t*) C. J. (1837-38) 275; *ibid*. (1842) 198; *ibid*. (1843) 133; *ibid*. (1847-48) 511, 965.

(*u*) Beverley case, 1859, C. J. (1859) 359.

(*a*) C. J. (1857) 292, 295, 369, 385; *ibid*. (1859) 369; *ibid*. (1866) 288.

House, in such cases, is rendered unnecessary by the direct operation of the law.

**Writs suspended.**—When general and notorious bribery and corruption have been proved to prevail in parliamentary boroughs, the House has suspended the issue of writs (*b*), with a view to further inquiry, and proceedings for the ultimate disfranchisement of the corrupt constituencies by Act of Parliament (*c*).

#### COMMISSIONS OF INQUIRY

A royal commission of inquiry under the Election Commissioners Act, 1852, may be appointed, upon the joint address of both Houses of Parliament, to investigate the circumstances of an election, when an election committee or the judges who have tried an election petition have reported that corrupt or illegal practices extensively prevailed at the election or when the same allegation has been made in a petition to the House of Commons signed by two or more electors and presented within twenty-one days of the return or within fourteen days of the meeting of Parliament (*d*).

Addresses were agreed to in the cases of Canterbury, Cambridge, Maldon, Barnstaple, Kingston-upon-Hull and Tynemouth, in 1853; Galway, in 1857; Gloucester and Wakefield, in 1859; Lancaster, Great Yarmouth, Reigate and Totnes, in 1866; Beverley, Bridgwater, Cashel, Sligo, Dublin and Norwich, in 1869; Norwich and Boston, in 1874; Boston, Canterbury, Chester, Gloucester, Knaresborough, Macclesfield, Oxford and Sandwich, in 1880; and Worcester, in 1906; and in 1869, commissioners were

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(*b*) Liverpool, 1831, C. J. (1830-31) 458, 493; Warwick, 1833, *ibid.* (1833) 611; *ibid.* (1834) 9, 579; Carrickfergus, 1833, *ibid.* (1833) 531, 599; Hertford, 1833, *ibid.* 578, 649. In the last three cases, the writs were suspended until the dissolution in December, 1834. Meanwhile bills of disfranchisement, or for preventing bribery in these boroughs, were pending. Stafford, 1835; writ suspended until 1837, until there was no prospect of passing a disfranchisement bill; see debate, 13th February, 1837, on issue of writ, *ibid.* (1835) 262; *ibid.* (1836) 792; *ibid.* (1837) 40. Sudbury; writ suspended from 14th April, 1842, till 1st August, 1843, *ibid.* (1842) 188, 467, etc.; Disfranchisement Act, 7 & 8 Vict. c. 53. Ipswich, 1842; writ suspended from 25th April until 1st August, 1842, C. J. (1842) 221, 554. Yarmouth, 1848; writ suspended from 14th February until 30th June, *ibid.* (1847-48) 213; freemen disfranchised by 11 & 12 Vict. c. 24. Harwich, 1848, C. J. (1847-48) 330, 702. In 1851, an Act was passed for inquiring into bribery at St. Albans, 14 & 15 Vict. c. 106; and the borough was disfranchised by 15 & 16 Vict. c. 9. Barnstaple; writ suspended from 22nd April, 1853, until 11th August, 1854. Cambridge; writ suspended from 3rd March, 1853, until 11th August, 1854. Canterbury; writ suspended from 22nd February, 1853, until 11th August, 1854. Wakefield and Gloucester; writs suspended from July, 1859, until 20th February, 1862. See Parl. Deb. (1860) 156, c. 771; *ibid.* 157, c. 1637; *ibid.* (1861) 161, c. 247; *ibid.* 163, c. 1070, etc. Norwich; writ suspended in 1875, C. J. (1875) 247; Wigan Election, 1881; writ suspended until November, 1882; C. J. (1881) 492; *ibid.* (1882) 172, 514. Worcester, 1906; writ not issued until 31st January, 1908, C. J. (1906) 502; *ibid.* (1907) 14; *ibid.* (1908) 17. On several other occasions writs have been suspended for shorter periods until the printing of evidence; e.g., Nottingham, 1843; Harwich, 1848; and Clitheroe, 1853.

(*c*) Copies of disfranchisement bills are served upon the returning officer before the second reading, C. J. (1844) 443; *ibid.* (1847-48) 366; *ibid.* (1870) 147, 223, 288; *ibid.* (1876) 325.

(*d*) Election Commissioners Act, 1852; Parliamentary Elections Act, 1868, ss. 15, 56; the Corrupt and Illegal Practices Prevention Act, 1883, ss. 11, 12. Rogers on Elections, ii (1928 edit.) 256. For the right of appeal from a decision of the Commissioners, see the Corrupt and Illegal Practices Prevention Act, 1883, s. 38 (2); C. J. (1907) 69.

appointed, by statute, to inquire into corrupt practices reported by an election judge to have been committed by the freemen of Dublin.

#### BILLS FOUNDED ON REPORTS OF COMMISSIONERS

In pursuance of the reports of election commissioners, by the Reform Act of 1867, the four corrupt boroughs of Lancaster, Great Yarmouth, Reigate and Totnes were disfranchised. In 1870, the boroughs of Bridgwater, Beverley, Sligo, and Cashel, and certain voters of the cities of Norwich and Dublin, were disfranchised by special Acts (*e*); and in 1871, certain other voters of Norwich were disfranchised. In 1876, after the reports of two commissions, an Act was passed forbidding an election for Norwich until the end of the Parliament, and disfranchising several persons for a period of seven years, in Norwich and Boston. (*f*)

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(*e*) 33 & 34 Vict. cc. 21, 25, 38, 54.

(*f*) 39 & 40 Vict. c. 72; see also the Acts 44 & 45 Vict. c. 42; 45 & 46 Vict. c. 68, prohibiting elections for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford and Sandwich.

## CHAPTER XI

# DISQUALIFICATION FOR MEMBERSHIP OF EITHER HOUSE

In this chapter, the legal disqualifications for sitting and voting in either House of Parliament will be considered.

Any disqualifications for the Parliament of England were, at the time of the union with Scotland, made applicable to the Parliament of Great Britain (*a*).

Similarly, at the time of the union with Ireland, any disqualifications for the Parliaments of Great Britain or of Ireland were by statute extended to the Parliament of the United Kingdom (*b*).

## DISQUALIFICATIONS FOR MEMBERSHIP OF THE HOUSE OF LORDS (*c*)

### ALIENS

Aliens are disqualified by statute for membership of the House of Lords.

By the Act of Settlement, 1700-1, "no person born out of the Kingdoms of England, Scotland or Ireland, or the Dominions thereunto belonging . . . (except such as are born of English parents)" may be a member of either House (s. 3). The British Nationality and Status of Aliens Act, 1914, enables an alien to become naturalised, and in such a case the provision of the Act of Settlement no longer applies. (See also below, pp. 193-4).

### INFANCY

By standing order No. XII, made on 22nd May, 1685, the Lords prescribe that no lord under the age of twenty-one years shall sit in their House (*d*).

### BANKRUPTCY

Bankrupts are disqualified by statute for sitting or voting in the House of Lords.

A debtor adjudged bankrupt is by the Bankruptcy Act, 1883, s. 32, disqualified for sitting and voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland (*e*) to sit and vote

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(*a*) S. 29 of the Succession to the Crown Act, 1707.

(*b*) Ss. 1-3 of the House of Commons (Disqualifications) Act, 1801.

(*c*) Apart from the principal restrictions on the Crown's right of summons given by 1 Anson, 219-225.

(*d*) For a similar provision in the case of representative peers of Scotland see the Union with Scotland Act, 1706, ss. 6, 7.

(*e*) Further elections of Irish peers appear in any case to be barred, there being no Lord Chancellor of Ireland to whom the writ would be issued.

in the House of Lords : though the disqualification can be removed if the adjudication is annulled, or if the bankrupt obtains his discharge, with a certificate that the bankruptcy was caused by misfortune, and not by misconduct. (For the extent and application of this Act, see Index to the Statutes Vol. II, under Bankruptcy.) In England a peer becomes bankrupt when an order has been made under any Act adjudging him a bankrupt : in Scotland, when sequestration of his estates has been awarded : in Ireland, when he is adjudged bankrupt. The Court certifies the bankruptcy to the Speaker of the House of Lords and the Clerk of the Crown (Bankruptcy Act, 1914, s. 106 (1)) ; and a writ of summons is not to be issued to any peer for the time being disqualified (Bankruptcy Disqualification Act, 1871, s. 8). For the application of the Bankruptcy Act to peers, see L. J. (1872) 138, 206, 321, 322, 342, 429 ; *ibid.* (1910) 285 ; *ibid.* (1914-16) 305, 376 ; H. L. Deb. (1915-16) 20, c. 45, 959 ; L. J. (1916) 37, H. L. Deb. (1916) 21, c. 203 ; L. J. (1917-18) 263, H. L. Deb. (1917-18) 26, c. 899 ; L. J. (1919) 226, H. L. Deb. (1919) 35, c. 196 ; L. J. (1920) 50, H. L. Deb. (1920) 39, c. 152 ; L. J. (1923) 16, H. L. Deb. (1923) 53, c. 54. For a case in which the certificate was rescinded, see L. J. (1881) 24, 140. When a bankruptcy has been determined in the manner prescribed by law, these disqualifications cease. A representative peer for Scotland or Ireland vacates his seat unless his bankruptcy is determined within one year, and a new election is held.

By s. 10 of the Bankruptcy Disqualification Act, 1871, a disqualified peer is not deprived of his privileges of peerage (repealed as to England by the Bankruptcy Act, 1883, s. 169), or entitled to be elected to or to sit in the House of Commons ; but by the Bankruptcy Act of 1914, s. 128, and the Bankruptcy (Ireland) Act Amendment Act, 1872, s. 40 "if a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with . . . as if he had not such privilege." By the Bankruptcy Disqualification Act, 1871, a disqualified person who sits or votes in the House of Lords, or attempts to sit or vote, is guilty of a breach of privilege (s. 6).

#### FELONY

A person convicted of treason or felony is disqualified by statute for membership of the House of Lords.

Under the Forfeiture Act, 1870, the old rule as to corruption of blood was abolished, and except, in the case of outlawry, the forfeiture which followed such corruption. "No conviction . . . for any treason or felony or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat" (s. 1). A conviction of treason or felony, therefore, is no longer held to affect the nobility of blood of the convicted person ; but the Act provides that if the conviction is followed by sentence of death, penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months, the convicted person is disqualified for sitting or voting as a member of either House of Parliament until he has either suffered his term of punishment or received a pardon (s. 2 & 7).

A report made by a committee of the Privy Council appointed under the Titles Deprivation Act, 1917, as to two princes of the blood royal, who were peers of Parliament and had adhered during the war to the King's enemies, was presented to parliament in session 1918 and presented again in session 1919, as the period during which a motion could be made disapproving of the report could not be completed in session 1918. No motion disapproving of it having been made by either House during the prescribed period in session 1919, the report became final and the roll of the Lords was ordered

to be reprinted as amended in accordance with the report. L. J. (1919) 107, H. L. Deb. (1919) 34, c. 99, H. C. Deb. (1919) 112, c. 736.

## WOMEN

Women are disqualified for sitting in the House of Lords.

Although a barony by writ descends to heirs generally, and a woman may therefore be a peeress in her own right "the privilege of acting as an hereditary counsellor to the Crown is confined to the male sex, and no woman has ever been summoned to sit in the House of Lords." (1 Anson, 227.)

It has been contended that the Sex Disqualification (Removal) Act, 1919, which removed the disqualification of women for the exercise of any public function, entitles a peeress to sit and vote in the House of Lords. But, on a petition by Viscountess Rhondda in 1922, it was held by the Committee of Privileges by a majority of twenty-two to four that the Act did not entitle a peeress in her own right to receive a writ of summons to sit and vote in the House of Lords. The words of the Act only removed a disability and did not create a right. (H. L. (E.) [1922] 2 A. C. 339; 38 T. L. R. 759.)

It may be noted also that in the course of debates on the Act of 1919, a Commons' amendment, by which the words "public function" were declared to include sitting and voting in the Lords, was rejected by the Lords and not insisted on by the Commons. (C. J. (1919) 330 & 376; L. J. (1919) 431.)

## MISCELLANEOUS STATUTORY DISQUALIFICATIONS

Under an Act of 1661 (against treason and sedition) a peer convicted of an offence under the terms of that Act is disqualified to sit. (13 Cha. 2, st. 1, c. 1, s. 7). Under the Government of India Act, 1935, and the Government of Burma Act, 1935, advisers to the Secretary of State under these Acts are not capable of sitting or voting in either House. (26 G. 5 & 1 E. 8, c. 2, s. 278 (4); 26 G. 5 & 1 E. 8, c. 3, s. 140 (4))

## DISQUALIFICATION BY SENTENCE OF EXPULSION

Expulsion by sentence of the House of Lords, acting in its judicial capacity, may create a permanent disqualification, unless overruled by the exercise by the Crown of the prerogative of pardon (see p. 107). A resolution by the Lords as a legislative body could not, however, exclude a Member permanently.

## DISQUALIFICATIONS FOR MEMBERSHIP OF THE HOUSE OF COMMONS

Certain persons are disqualified for membership of the House of Commons by some incapacity "whether inherent, as in the case of an infant or lunatic, or acquired by profession or office, or incurred by felony, bankruptcy or corruption" (f).

## ALIENS

An alien is disqualified both by common law and by statute for membership of either House of Parliament, but an alien who has been naturalized is not disqualified.

(f) 1 Anson, p. 80.



The two statutes governing the disqualification of aliens are the Act of Settlement, 1700-1, and the British Nationality and Status of Aliens Act, 1914.

Before 1700, an alien who had been naturalized might sit in Parliament, but the Act of Settlement (s. 3) declared that "no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents), shall be capable to be of the privy council, or a member of either House of Parliament." The British Nationality and Status of Aliens Act, 1914 repealed the words "naturalized or" and also declared that as from the date of his naturalization such a person should "have to all intents and purposes the status of a natural-born British subject" (see also the Naturalization Act, 1872). It was confirmed by the judgment in *Rex v. Speyer* and *Rex v. Cassel* that the repeal of "naturalized or" removes, in the case of a naturalized alien, the disqualification for membership of the Privy Council or of Parliament created by the Act of Settlement ([1916] 1 K. B. 595, 2 A. C. 858).

#### INFANTS

Infants under twenty-one are disqualified by the Act 7 & 8 Will. 3, c. 25, s. 7, for election to the House of Commons.

This disqualification was applied to Scotland by the Act of Union (Union with Scotland Act, 1706), and to (Northern) Ireland by the Parliamentary Elections (Ireland) Act, 1823, s. 74. Before the passing of the Act of William III several members were notoriously under age, yet their sitting was not objected to. Sir Edward Coke held that infants were disqualified by the law of Parliament, but that several sat "by connivency: but if questioned would be put out" (10th March, 1623; C. J. (1547-1628) 681, and see 2 Hatsell 6); yet on the 16th December, 1690, on the hearing of a controverted election, Mr. Trenchard, though admitted by his counsel to be a minor, was declared upon a division to be duly elected (2 Hatsell 9; C. J. (1688-93) 508; see, however, the case of Sir Wilfred Lawson, 1717, C. J. (1714-18) 672). Even after the passing of the Act some minors sat "by connivance." Charles James Fox was returned, sat and spoke before he was of age (Fox, *Memorials*, i, 51); and Lord John Russell was returned a month before he came of age (Walpole, *Life of Lord John Russell*, i, 70). But there are no instances of such breaches of the law since the passing of the Reform Bill of 1832.

#### LUNACY

Lunacy or idiocy is a disqualification at common law. There is also, under the Lunacy (Vacating of Seats) Act, 1886 (g), a statutory procedure for vacating the seat of a sitting Member of unsound mind.

Under this Act, if a Member is placed in a lunatic asylum, the duty of sending a certificate of the fact to the Speaker, is laid upon every person on whose order or certificate the Member was received, committed or detained; or any two Members may certify to the Speaker that they are credibly informed that the Member has been placed in an asylum. The

(g) For the law on this subject prior to 1886, see D'Ewes, 126; Mr. Perne's case, 1566, C. J. (1547-1628) 75; Mr. Alcock's case, 1811, *ibid.* (1810-11) 226, 265, 687. There is a curious entry in the Journal of 14th February, 1609. "Hassard—69—incurable—bed-rid—a new writ" *ibid.* (1547-1628) 392; case of Mr. A. Steuart, Parl. Deb. (1861) 162, c. 1941; Rogers on Elections (19th edition) ii. 5, 49.

Speaker, upon the receipt of such certificate, forthwith transmits it to the commissioners of the Board of Control (s. 11 of the Police, Factories, &c. (Miscellaneous Provisions) Act, 1916) constituted under the Mental Deficiency Act, 1913. The Board, without delay, will examine the Member to whom the certificate relates, and report to the Speaker whether he is of unsound mind. The Speaker, at the expiration of six months from the date of such report, requires the commissioners to re-examine the Member in question, and on their report that he is still of unsound mind, the seat of the Member becomes vacant. The Speaker lays the reports upon the table, and issues his warrant to the Clerk of the Crown to make out a new writ for the election of a Member to supply the vacant seat. (C. J. (1916) 190, 191.)

Apart from the statutory procedure described above, "the disqualification of a Member on the ground of insanity might . . . have been brought before the House in one of two ways: by petition from the constituency which is deprived of the services of its Member, if the Member is in confinement, or by a question of privilege being raised if a person certified to be of unsound mind should take part in the business of the House." (1 Anson 81-2; C. J. (1810-11) 226; Parl. Deb. (1861) 162, c. 1941.)

## PEERS

An English or Scottish peerage is a disqualification, but an Irish peer, unless elected as one of the representative peers of Ireland (*h*) may sit for any place in Great Britain.

English peers are ineligible for the House of Commons as having a seat in the upper House; and Scottish peers, as being represented there, by virtue of the Act of Union. (There are numerous precedents of new writs issued in the room of Members becoming peers of Scotland; e.g. Earl of Dysart, 10th November, 1707; Lord Galloway, 13th January, 1774; Earl of Lauderdale, 22nd January, 1790; Earl of Eglinton, 3rd November, 1796; Marquess of Queensbury, 3rd February, 1857, etc.). If a Member of the House of Commons succeeds to a peerage in virtue of which he acquires a seat in the House of Lords or to a Scottish peerage, or is created a peer of the United Kingdom his seat in the House of Commons is vacated and a new writ is issued (see p. 178).

In 1895, however, Lord Wolmer, Member for West Edinburgh, on succeeding to the Earldom of Selbourne, contended that a peer of the United Kingdom was not disqualified as such, and that until he received a writ of summons as a Lord of Parliament, he might sit in the House of Commons; but the House, upon receiving a report from a select committee that Lord Wolmer had succeeded to a peerage of the United Kingdom, at once directed that a new writ should be issued. (Parl. Deb. (1895) 33, c. 1058, 1728). A select committee, appointed in 1894, to inquire into the vacating of seats, reported that the House usually waited for proof of succession to a peerage by one of its members, such proof being furnished by the issue of the writ, but that if there was any delay in applying for the writ the House could ascertain the fact and act on such evidence as it thought sufficient. (H. C. 272 (1895).)

The sons of English peers have been eligible since an order made by the House on the 21st January 1549, but the eldest sons of Scottish peers,

(h) Union with Ireland Act, 1800; Representative Peers (Ireland) Act, 1857; Election of Representative Peers (Ireland) Act, 1882.

not having been eligible to the Scottish Parliament, were held to be ineligible to the Parliament of Great Britain (2 Hatsell, 12). Their disability was removed by the Representation of the People (Scotland) Act, 1832 (s. 37). The wives of peers are not disqualified for membership of the Commons.

#### BANKRUPTCY

Under English law a bankrupt is disqualified by statute for election, or, if a Member, for sitting and voting. Enactments applying to Scotland and Northern Ireland vary slightly, particularly in the latter case, where a bankrupt is not disqualified for election, though he becomes disqualified if adjudicated bankrupt while a Member.

**Bankruptcy, England.**—By s. 32 & 33 of the Bankruptcy Act, 1883, a debtor who is adjudged bankrupt is incapable of being elected to or of sitting or voting in the House of Commons, or on any committee thereof, until the adjudication is annulled, or until he obtains from the court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part.

When a Member is adjudged bankrupt, if the disqualifications imposed by the Act are not removed within six months from the date of the order, the court is required to certify the bankruptcy to the Speaker (Bankruptcy Act, 1914, s. 106 (2) ); the seat of the Member thereupon becomes vacant; and, if the House be then sitting, a new writ is issued (see e.g. C. J. (1830) 3); or if the Speaker receives the certificate during a parliamentary recess, he issues his warrant for a new writ to supply the vacancy which the bankruptcy has created (Bankruptcy Act, 1883, s. 33; and see p. 181). As no penalty attaches to a bankrupt for sitting and voting, and as no official notice of his bankruptcy is required to be given to the Speaker for six months, a bankrupt Member may sit with impunity, unless the House takes notice that he is incapable of sitting and voting, and orders him to withdraw (C. J. (1857-8) 229). The disqualification created by the Bankruptcy Act, 1883, s. 32, is, by the Bankruptcy Act, 1890, s. 9, limited to the period of five years from the date of a discharge under either Act.

These sections are not affected by the Bankruptcy Act, 1914, which repealed the greater part of the existing statutes and re-enacted them in a consolidated form, but, by s. 128 of the 1914 Act, if a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with as if he had not such privilege.

**Bankruptcy, Scotland and Northern Ireland.**—The English Bankruptcy Acts (see above) do not extend to Scotland or Northern Ireland, except so far as regards persons adjudicated bankrupt in England (see Index to the Statutes Vol. II, under Bankruptcy, for the detail of sections applicable). But the provisions of ss. 32 and 33 of the Bankruptcy Act, 1883, are (with modifications framed to meet the bankruptcy procedure of Scotland) applied, by s. 183 of the Bankruptcy (Scotland) Act, 1913, to persons who have been adjudged bankrupt in Scotland. Under this Act, however, the certificate that the bankruptcy was caused by misfortune and without misconduct on the part of the bankrupt is not required in Scotland (s. 183 (3) (b)). A person adjudged bankrupt in Scotland is accordingly ineligible as a Member for any constituency.

There is no statutory provision applying to Northern Ireland which prohibits a bankrupt from being elected to the Commons of the United Kingdom (see Rogers on Elections, ii, 1928 ed., 26). Members who become bankrupt in Northern Ireland are subject to the provisions of the Members of Parliament (Bankruptcy) Act, 1812, and the Bankruptcy (Ireland) Amend-

ment Act, 1872, which relate to the incapacity of a Member for sitting and voting, and in effect resemble the provisions of the Bankruptcy Act, 1883, except that the certificate of the court and consequent vacation of the seat are postponed until one year after the bankruptcy. (See London Gazette, 18 September 1903, p. 5783; C. J. (1904) 4; *ibid.* (1909) 307; H. C. Deb. (1909) 7, c. 2305.) Under the Bankruptcy (Ireland) Amendment Act, 1872, s. 40, if a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with as if he had not such privilege.

## FELONY

A person attainted, or convicted of treason or felony (until pardon or expiry of sentence) is disqualified for membership of the House of Commons.

Coke stated that a man attainted of treason or felony was not eligible for election because the writ which was addressed to the sheriff called for the return of "fit and proper" persons, "which they cannot be said to be, when they are attainted of treason or felony." (4 Inst. 47).

Under the Forfeiture Act, 1870, persons convicted of treason or felony, and sentenced to death, penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months, are disqualified for election or sitting and voting in either House till expiry of the sentence or receipt of a pardon. (Forfeiture Act, 1870, s. 2 & 7 and Civil Rights of Convicts Act, 1828, s. 3; Criminal Law (Ireland) Act, 1828, s. 33).

The following cases may also be referred to as illustrating the application of the law of Parliament both before and after the passing of the Act of 1870:—

*Smith O'Brien's case*, 1849, (C. J. (1849) 319; Parl. Deb. (1849) 105, c. 667); *Rossa's case*, 1870, (C. J. (1870) 27); *Mitchel's case*, 1875, (H. C. 50 (1875); C. J. (1875) 49, 52; Parl. Deb. (1875) 222, c. 493; 3 O'M. & H. 37; *Davitt's case*, 1882, (C. J. (1882) 77); *Daly's case*, 1895, (C. J. (1895) 353); *Lynch's case*, 1903, (C. J. (1903) 3 & 40).

But an indictment for felony causes no disqualification until conviction (*i*). Even after conviction a new writ has not been issued, when a writ of error was pending, until the judgment had been affirmed (*j*).

A Member convicted of misdemeanour, or sentenced to any lighter penalty than those described in s. 2 of the Forfeiture Act, 1870 (see above), is not thereby disqualified. In such cases the House may decide to expel a Member (*k*), but expulsion does not create a disability, or prevent a constituency from re-electing the expelled Member (see pp. 105-6).

## CORRUPT PRACTICES AT ELECTIONS

The statutory penalties inflicted for corrupt practices at elections may have the effect of disqualification for the House of Commons. A person may, at an election, be disqualified for being elected by reason of corrupt practices committed at an election previous thereto. So also a person not disqualified before an election may, during the election, become disqualified by reason of corrupt practices being committed at

(i) 21st January, 1580, C. J. (1547-1628) 118, 119.

(j) C. J. (1849) 319.

(k) E.g., C. J. (1922) 319.

such election ; but the latter disqualification can only arise *ex post facto* upon an investigation into such election. This disqualification always existed at common law, and the statutory provisions to which reference will be made are intended only to give fuller effect to the common law of Parliament (1).

Under s. 4 of the Corrupt and Illegal Practices Prevention Act, 1883, a candidate for parliamentary election who is reported by an election court as personally guilty of corrupt practices, is incapacitated, during seven years from the date of the report, from being elected for any constituency, and for ever from sitting for the constituency where the corrupt practice took place. Under s. 5, a candidate who is reported as guilty by his agent is incapacitated, during seven years from the date of the report, from being elected for the constituency where the corrupt practice took place. Under ss. 6 and 38, any person who is convicted on indictment, or who is reported by an election court or by election commissioners to have been guilty of a corrupt practice, is incapacitated from being elected to any constituency, during seven years from the date of conviction, if convicted, or, if reported, from the date of the election. These incapacities are imposed in addition to the election being avoided. (See Rogers on Elections, 1928 ed., ii, 28. For the proofs of agency in election inquiries and its results, see *ibid.* 394 *et seq.*)

*Dodson's case*, 1880.—In 1880, Mr. Dodson, elected at the general election in March for the city of Chester, afterwards accepted the office of president of the local government board, and was re-elected without opposition. Meanwhile a petition had been lodged against his first election ; and in July the election judges determined that his election was void, on the ground of bribery by his agents. It was generally held that, by virtue of the Corrupt Practices Prevention Act, 1854, and the Parliamentary Elections Act, 1868, s. 46 (since repealed by the Corrupt and Illegal Practices Prevention Act, 1883), he was thenceforth incapable of sitting for Chester in that Parliament. But as his second election had not been questioned, doubts were raised whether he had legally ceased to be a Member, and was qualified to sit for another constituency. To remove all doubts upon this question, he accordingly accepted the Chiltern Hundreds, and was elected for Scarborough.

## DISQUALIFICATION OF CERTAIN OFFICE-HOLDERS

Certain office-holders are disqualified, particularly holders of offices or places of profit from or under the Crown. As has been shown in the Report from the Select Committee which considered the matter in 1941 (m) (from which much of the material in this section has been drawn) "the main considerations affecting the law on this subject . . . are (1) incompatibility of certain non-ministerial offices with membership of the House of Commons (which must be taken to cover questions of a Member's relations with, and duties to, his constituents), (2) the need to limit the control or influence of the executive government over the House by means of an undue proportion of office-holders being members of the House, and (3) the essential condition of a certain number of

(1) Rogers on Elections, 1928 ed., ii, 27-8.

(m) H. C. 120 (1940-41).

ministers being members of the House for the purpose of ensuring control of the executive by Parliament" (n).

#### HISTORICAL DEVELOPMENT LEADING TO STATUTORY EXCLUSION OF OFFICE-HOLDERS WITH THE EXCEPTION OF MINISTERS

The compatibility of office-holding, especially office-holding from or under the Crown, with membership of the House of Commons, is a subject of great constitutional importance, involving in particular the question of the relations between the Commons and the Crown. The matter is one which has been an important parliamentary issue throughout the past four hundred years, and is still the subject of frequent legislation. The attitude of the House of Commons to this question has passed through every kind of variation in response to the successive stages in the establishment of its control over the executive government. Three of the principal phases in the development may be distinguished.

(1) **The "Privilege" Phase, before 1640.**—The attitude of the sixteenth century House of Commons to the question of the holding by its members of offices under the Crown first appears as a jealous insistence on its own prior claim to their services and a tendency to distinguish between offices, not so much from fear of the influence of the Crown or by regard for any particular theory of government—these considerations arose later—but almost entirely according to whether they were or were not compatible with the physical attendance of their holders on the service of the House. This attitude, which was concerned with an incidental feature and not the essence of the problem, and regarded office as only one of a number of disqualifications of a similar nature, was based on the conception of Privilege, the establishment of which was the main achievement of the Commons during the period which runs from the middle of the reign of Elizabeth to the Long Parliament of Charles I—roughly from 1575 to 1640. (For details, see H. C. 120, p. 138-141 (1940-41).

The Privilege phase of the Commons' attitude to offices of profit under the Crown has left a permanent mark on the law in the shape of the common law disqualification of judges and clergy, and also on the position of sheriffs and ambassadors. The existing position of those offices as later affected by statutory law is examined below (pp. 205-9).

(2) **The "Corruption" Phase, from 1660.**—This period runs from the Restoration of 1660 to the establishment of Cabinet government, wherever that date may be placed, somewhere in the eighteenth century. It is linked with the former period, which has just been described, since it carried to its logical conclusion, though by new methods, the ideal which had become possible through the success of Privilege in that period—a constitutional balance between an independent legislature and an independent executive. This was the ideal which inspired its legislation about offices of profit. But it is also linked with the third period (see below). For it proved impossible in practice for Parliament and the Crown to perform their allotted functions without interfering with each other; and it soon appeared that a new issue would have to be fought out, namely whether Parliament should be dependent on the Crown, or the Crown on Parliament.

The House of Commons in this middle period no longer relied on the machinery of decisions by the House in individual cases, forming precedents

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(n) H. C. 120, p. xiv (1940-41).

to be generalized later into rules. It relied upon statutes, that is, upon the concurrence of the Lords and the Crown, even in defining the qualifications of its own Members—a course which was repugnant to the notion of Privilege. New law was required, and Privilege, like the common law of which it was part, purported only to declare the existing law.

Since the House of Commons had become too powerful to be ruled by repressive methods, the arts of management were tried in their turn; and at the beginning of the administration of Danby a comprehensive system was instituted of winning over individual Members to the king's interest by the distribution of offices and places of profit under the Crown.

The House, therefore, sought to make the holding of office incompatible with membership of the Commons. In 1675, a Bill for declaring vacant the seats of any Members who accepted "any offices of benefit, but permitting their re-election," was debated in the House of Commons and defeated by a narrow majority (Grey's Debates III, 53 and 58). In 1680, the Commons resolved that no Member should accept a place or pension without leave of the House (Parliamentary History, Vol. IV, p. 1270; Todd "Parliamentary Government in England," Vol. II, p. 70). This resolution was no more than an interesting indication of the trend of opinion, as by this time the House of Commons had ceased to be capable of extending its privileges, and was consequently not by itself constitutionally competent to create a new disqualification (Todd, *op. cit.* 115). In 1692, a Place Bill "touching free and impartial proceedings in the Commons" was passed by the House of Commons without a division but rejected by the Lords. In the following year this bill was reproduced in substantially the same form and passed by both Houses. Its object appears to have been to disqualify all office holders under the Crown from a seat in the House of Commons, but its effect was softened by the introduction of a proviso in the Lords that all office holders whose seats should be vacated under this Act might be afterwards chosen again to serve in the same Parliament. The Commons concurred in this amendment; but the king, who regarded the whole measure as an encroachment upon his prerogative, refused to give it the royal assent.

These two expedients, (1) complete exclusion of office holders, and (2) vacation of seats without bar to re-election, were canvassed by the House of Commons separately or together in a series of bills during the last decade of the seventeenth century. Eventually the expedient of complete exclusion was given statutory effect in the Act of Settlement, 1701. But before this Act came into operation the House altered its mind and embodied both expedients in the Succession to the Crown Act, 1705 (4 & 5 Anne, c. 20 (Stats. of the Realm) or 4 Anne, c. 8, (Ruffhead)) re-enacted after the Union with Scotland in 1707. This Act which is the basis of the greater part of the existing law on the subject, applied the two expedients to different classes of offices, (1) absolute exclusion, to *new* offices (offices created since 25th October, 1705), and certain existing specified offices, and (2) vacation of seats with re-election, to *old* offices (i.e., those in existence before that date).

*Provisions of the Succession to the Crown Act, 1707.*—Section 24 (or 25 in some editions) provided that no person holding any office or place of profit whatsoever under the Crown created since the 25th October 1705 should be able to sit in the House of Commons. A similar absolute disqualification was applied to certain named offices, and also to persons having any pension from the Crown during pleasure. Section 25 (or 26 in some editions) provided that if any person, being a Member, accepted any office of profit from the Crown, his election was avoided and a new writ was to issue. He

was, however, capable of being again elected. This section has always been construed as applying to old offices, i.e. those created prior to 1705, although it does not expressly so state. It clearly must be so limited as it would otherwise be in direct conflict with the preceding section. (For cases which throw some light on the obscurity of this and supplementary statutes, see H. C. 120, p. 150-54, (1940-41).)

(3) The "Ministerial Responsibility" Phase, after 1705.—The provisions of the Act of Settlement of 1701, completely excluding all office-holders (see above), may be regarded as the culmination and final expression of the conception prevailing at this period of the relations between the House of Commons and the Crown. This was the conception of a balance of power and a division of functions, involving a distinction of personnel (not unlike that of the American constitution) between the executive and the legislature. It was a conception which was already growing out of date. The Commons were already ceasing to be exclusively the focus of criticism and opposition to the royal government. The government was ceasing to be something entirely external to the House of Commons. A process had in fact begun which was destined to bring the government onto the floor of the House of Commons; and to change the House of Commons from being a body united, or almost united, in opposition to the Crown into a body of which only the minority are opponents, while the majority are supporters, of a ministry whose chief members are necessarily also members of the House of Commons.

This new constitutional position, which required the presence of ministerial office-holders in the House of Commons, received some measure of recognition in the Succession to the Crown Act, of which section 25 (see p. 200) permitted the re-election of Members accepting offices of profit from the Crown which were already in existence. It is true that, in form, this section did not express any constitutional distinction between ministerial and other offices. But it soon became the model of subsequent provisions, such as section 3 of the Act of 1741 (House of Commons Disqualification Act) which, taken together, legitimize the presence in the House of Commons of the holders of ministerial offices, whether created before or after 1705. Yet, with all its exceptions it is, in the main, the old attitude of jealousy of the power of the Crown to undermine the independence of the House of Commons, the old suspicion of corruption, which underlies the basic statute of Anne, and which still governs the interpretation of the law, whenever the House finds itself called upon to decide doubtful cases of the holding or acceptance of offices of profit under the Crown.

## PRESENT POSITION OF OFFICE-HOLDERS

The present position of the law in relation to the various classes of office-holders is based to a greater or less extent upon each of the three "phases" described above. It is principally based on the constitutional invention of the third "phase"—government by ministers responsible to Parliament. But the "Privilege" phase still affects the position of certain office-holders—ambassadors and sheriffs—and, until the nineteenth century, provided the basis for the exclusion of judges and clergy of the Church of England. What has been called the "corruption" phase, which is embodied in ss. 24 and 25 of the statute of 1707 and



subsequent Place Acts (o), is important in two ways. The need to rationalize the distinction which it had established between "old" and "new" offices led in course of time to the distinction between political and non-political offices. It also provides the principle by which doubtful cases of office-holding are still for the most part decided.

# I. POLITICAL OFFICES

The first class of offices consists of what are known as political offices. These comprise all the political heads of the departments of state, certain ministers without departments, political under-secretaries of the departments of state and certain Household officers with political functions in the House of Commons. Many of the ministerial offices were already in existence at the time of the passing of the Statute of Anne, and those that were created later were for the most part brought under the provisions of s. 25 of that statute (which provided for "old offices").

**Anomalies caused by the provisions of s. 25 of the Succession to the Crown Act, 1707, relating to vacation of seat and re-election on appointment to ministerial office.**—These provisions involved the vacation of a seat by a Member appointed to any ministerial office but permitted his re-election. As the result of a series of statutes the position came to be that ministers in charge of departments of state had on appointment to vacate their seats and submit themselves to re-election, while their parliamentary under-secretaries were not required to vacate their seats. There were certain anomalies about this position. Some junior ministers, such as the Junior Lords of the Treasury, who received no salary, had to vacate their seats on appointment because their case had not been expressly provided for; while the Postmaster-General, whose office is not created by statute, could not be a member of the House of Commons, and had accordingly to be a peer up to 1866.

**Parliamentary under-secretaries.**—The political under-secretaries of the departments of state required to be specially provided for in order to be permitted to sit in the House of Commons. Unlike his minister, a political under-secretary, whose office was in existence in 1705, did not fall under s. 25 of the Act of 1707. His office may be an old office, but it is not an office *from* the Crown, for he is appointed by his political chief and not directly by the king. By the generally accepted reading of the Act of 1707, he escaped entirely from its provisions, being neither disqualified nor required to vacate his seat and stand for re-election. This seems to have been the construction put upon the statute by contemporaries, for Members do not appear to have vacated their seats on appointment as under-secretaries. New under-secretaryships fell, of course, unless specially provided for, under s. 24 of the statute. The position of under-secretaries in the old departments was eventually cleared up by s. 3 of the "Place" Act of 1741 (the House of Commons Disqualification Act, 1741) now superseded by the Ministers of the Crown Act, 1937, s. 9, which explicitly excepted them from the classes of offices the holders of which it disqualified, and by implication recognized them as not disqualified by the statute of 1707.

**Modifications in the Succession to the Crown Act effected by the Re-election of Ministers Acts, 1919 and 1926.**—With the increase in the

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(o) The House of Commons (Disqualification) Acts, 1715 to 1821. See Index to Statutes, Vol. II, tit. House of Commons.

number of government departments during the nineteenth century, and of late years, the number of these political offices has been constantly growing. A series of Acts will be found on the Statute Book, which, in creating new departments of state, provided that ministers accepting charge of such departments must vacate their seats, but were capable of re-election, and that the office of under-secretary in such a department might be accepted without vacation of seat.

There were serious inconveniences in the practical working of the principle that the acceptance by a Member of any of the principal offices of state entailed the vacation of his seat, since, on the appointment of a new government as the result of a general election, the business of Parliament and of the country might be held up for weeks, while ministers left their offices in order to submit themselves again to their constituents. A further objection was that the principle worked capriciously and unfairly, that it restricted the choice of new ministers by considerations regarding the safety of their seats, and that in some well-known cases it practically put an end to promising careers. (Reference may be made to II Todd, 126; 1 Anson, 4th edition, 87; H. C. Deb. (1919) 112, c. 614 *et seq.*) For these reasons Parliament first limited the principle by passing the Re-election of Ministers Act, 1919, making re-election unnecessary within nine months of a general election, and finally abolished the principle altogether in the amending Act of 1926.

The effect of the Re-election of Ministers Act, 1919, as amended by the Re-election of Ministers (1919) Amendment Act, 1926, thus entirely removes the necessity for re-election in the case of the acceptance of an old office. In the interval between 1707 and 1919 many new ministerial offices had been created which had been made subject to the same provisions as to re-election as that contained in s. 25 of the Statute of Anne. These were all covered by the Acts of 1919 and 1926, so that if the office was one the holder of which was capable of being elected or sitting or voting in the House of Commons, he did not have to seek re-election.

**Restriction on number of Ministers and Parliamentary Secretaries entitled to sit in the House of Commons.**—The law relating to the capacity of ministers holding political offices of profit to sit and vote in Parliament was simplified by the Ministers of the Crown Act, 1937 (Part II). S. 9 provides that the Prime Minister, Minister of Pensions, Chancellor of the Duchy of Lancaster and five Junior Lords of the Treasury may sit in the Commons. It also provides that not more than fifteen of the following principal ministers of the Crown may sit and vote in the Commons: Chancellor of the Exchequer, Secretaries of State, First Lord of Admiralty, President of the Board of Trade, and Ministers of Agriculture, Education, Health, Labour, Transport (and Co-ordination of Defence). S. 9 also provides that not more than three of the following ministers may sit: Lord President of the Council, Lord Privy Seal, Postmaster-General, First Commissioner (now Minister) of Works. S. 9 finally provides that not more than twenty parliamentary under-secretaries (*p*) shall sit in the Commons.

Apart from the ministers referred to in the Ministers of the Crown Act, 1937, certain other ministerial office-holders are qualified to sit and vote in the Commons. These are the four law officers of England (*q*) and Scot-

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(*p*) Including Civil Lord of the Admiralty, Financial Secretary of Treasury, Secretary of Department of Overseas Trade, Assistant Postmaster-General, etc., but excluding unpaid Parliamentary Secretaries.

(*q*) Formerly excluded by the common law of Parliament on the same ground as judges, because summoned to assist the House of Lords by writs of attendance. See H. C. 120, p. 163 (1940-41.)

land; the Treasurer, Comptroller and Vice-Chamberlain of the Royal Household; the Paymaster-General, by virtue of s. 5 of the Paymaster-General Act, 1835; the parliamentary secretary of the Ministry of Pensions, by s. 7 of the Ministry of Pensions Act, 1916; three Ministers without portfolio, if Privy Councillors, by s. 2 of the Re-election of Ministers Act, 1919; the Minister of Town and Country Planning and one parliamentary secretary, by s. 4 of the Minister of Town and Country Planning Act, 1943; and the Minister of National Insurance and a parliamentary secretary, by virtue of s. 4 of the Ministry of National Insurance Act, 1944. There is thus a permitted maximum of sixty-two paid ministerial offices whose holders may sit and vote in the Commons.

During the war of 1914-18 and for six months thereafter, limitation on the number of under-secretaries, etc., who might sit in the House of Commons, was suspended by the New Ministries and Secretaries Act, 1916, s. 9.

In the war of 1939-45 and subsequently, additional ministers and parliamentary under-secretaries were permitted to sit, under the Ministry of Supply Act, 1939, and the Ministers of the Crown (Emergency Appointments) Act, 1939, when the permitted maximum rose to about eighty-six offices.

## 2. NON-POLITICAL OFFICES

In general, the holders of non-political offices are entirely disqualified from sitting in the House of Commons by a long series of statutes (of which details are given in the Index to the Statutes).

The main groups of non-political offices are:—

(1) **Civil Service Office.**—Just as the presence in the House of Commons of ministers responsible for all the departments of state is a necessary condition of parliamentary government, so it is an equally essential condition that the permanent officials of such departments should not be permitted to sit in the House of Commons. No long experience of the workings of the parliamentary system of government was required to show that departmental officers could not sit in the House of Commons without sharing the political opinions of their chiefs, and that they could not actively support any political party without ceasing to be permanent.

There is some ground for recognizing the germ of this principle (which has saved our civil service from the evils of the American "spoils system") in ss. 24 and 25 of the statute of 1707. The beginning of the principle may even be found a little earlier, in the statutes of 1694 and 1699, which exclude respectively commissioners of stamp duties and commissioners of excise from the House of Commons. But a series of statutes was necessary in order fully to carry out the distinction. The first of these was the statute of 1741 (House of Commons Disqualification Act), (see p. 201-2), which disqualified a number of offices of this kind in existence at the time.

The statutory disqualification of permanent civil servants is reinforced by regulations of the Civil Service itself. The position of civil servants in this respect, which was previously regulated by a Treasury Minute of 12th November, 1884, is now governed by the Order in Council of 25th July, 1927, entitled the Servants of the Crown (Parliamentary Candidature) Order, 1927. These regulations do not, of course, purport to make the holding of office a disqualification for the House of Commons. But they

achieve the same result, from a different approach, by providing that if a civil servant becomes a candidate for Parliament he must resign his office (r).

(2) **Judges.**—Judges are disqualified, both by the law of Parliament and, in most cases, by statute.

Judges of the three common law courts were originally excluded from Parliament because they were assistants of the Lords, i.e., on the ground of Privilege (see above, p. 199). In 1605 a report from the Committee of Privileges referred to the fact that "Serjeant Snigg and Lord Chief Baron were attending as judges in the Higher House," and it was resolved that they should not serve in the Commons and should not be recalled. In 1620 a motion was made for a new writ in place of a Member appointed Chief Justice of the King's Bench. But no decision on the motion is recorded. Not until after the Restoration of Charles II is it expressly stated that new writs were issued in the case of Members appointed to the Bench (C. J. (1660-67) 80, 104, 187, 510, 535). Judges were thus originally excluded on the same ground as the Attorney-General, the King's Serjeants and Masters in Chancery. The latter had all become eligible for the House of Commons by the end of the seventeenth century, and it was, therefore, not on this ground that the exclusion of judges was maintained. Nor was it under the Act of 1707. If that Act had applied to judges, they would, as the holders of old offices under s. 25, have been re-eligible on the vacation of their seats. The true reason seems to be that the disqualification of the judges was already accepted as the law of Parliament before 1707, and that it was due to the growing conviction that the administration of justice ought to be removed from the influences of political controversy. The same conviction is expressed in s. 3 of the Act of Settlement, 1700, which provided that the judges should receive fixed salaries and hold their offices during good behaviour, subject to removal by an address of both Houses.

Thus, while the formal ground for the exclusion of the English judges is traceable to the jealous regard of the Commons for their privileges, the real ground is based on more modern considerations of constitutional incompatibility.

The English judges were not, however, excluded by statute till the passing of the Supreme Court of Judicature Act, 1873 (s. 9) and the Supreme Court of Judicature Act, 1875 (s. 5). Judges of the High Court and of the Court of Appeal (of which the Master of the Rolls is *ex officio* a judge) are today disqualified by s. 12 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925.

The ineligibility of judges had previously been extended by statute to the Scottish judges in 1733, and to the Irish judges in 1821, and to other persons holding judicial offices such as county court judges and chairmen of quarter sessions in England, and sheriffs and salaried sheriffs substitute in Scotland. The Recorder of an English borough is eligible except for the borough in which he is Recorder (s). But the Recorder of London, whose office is in the gift of the Court of Aldermen and not of the Crown, but has the judicial importance of a High Court judgeship, is by convention disqualified altogether. (His position was explained to the House of Commons in a statement on behalf of the Lord Chancellor in 1922, H. C. Deb. (1922) 153, c. 2171.)

(r) Under the war-time provisions of the House of Commons Disqualification (Temporary Provisions) Acts, 1941 to 1944, several Members were enabled to take up Civil Service appointments without vacating their seats.

(s) Municipal Corporations Act, 1882, s. 163 (6).

Stipendiary magistrates are excluded in one case by statute and in three cases by private Acts, and generally, it must be supposed, as holders of new offices under the statute of 1707. (For details, see Index to Statutes).

(3) **Statutory boards and authorities.**—There are a number of recent statutes which set up public authorities such as the Central Electricity Board, the Unemployment Board, the Traffic Commissioners and the London Passenger Transport Board. The disqualification of the holders of these offices is normally expressly provided for in the statutes under which they are constituted (for details, see Index to Statutes), usually in the indirect form that they are disqualified for office so long as they are Members of Parliament. These provisions are clearly intended to secure conformity with the conditions of parliamentary government. Although these public authorities are so constituted as to be free in respect of their day-to-day administration from political and ministerial control, yet some minister is in the last resort responsible for them to Parliament. It would seriously impair ministerial responsibility if the members of these boards could sit in the House of Commons; nor could they retain their posts on a change of Government, involving a change of party, if they had seats in the House of Commons. An exception to this general rule is provided by two mid-nineteenth-century statutes, which set up the Ecclesiastical Commissioners (*t*) and the Charity Commissioners (*u*) respectively (*a*). These Commissioners are represented in the House of Commons by one of their number, who is by law or in practice an unpaid Commissioner. He answers questions in Parliament like a minister, belongs as a matter of course to the party which is in power, and accordingly ceases to be a representative Commissioner on a change in the party complexion of the Government.

(4) **Colonial governors.**—Colonial governors or deputy-governors, by s. 24 of the Succession to the Crown Act, 1707, are incapable of being elected, or of sitting and voting; and if a Member of the House of Commons accepts such a post his seat is vacated and he cannot seek re-election.

See cases of Sir A. Leith Hay, Governor of Bermuda, 1838; Sir J. R. Carnac, Lieutenant-Governor of Bombay, and Mr. Poulett Thomson, Governor-General of Canada, 1839; Sir H. Hardinge, Governor-General of India, 1844; Sir H. Barkly, Governor of British Guiana, 1849; Sir John Young, Lord High Commissioner of the Ionian Islands, 1855; Mr. Grant Duff, Governor of Madras, 1881, etc. In the case of Sir Bryan O'Loughlen, in 1878, who had been appointed Attorney-General of the Colony of Victoria, the House insisted that this office was "an office or place of profit under the Crown within the meaning of the statutes in that behalf," and that Sir Bryan had vacated his seat by accepting that office. (C. J. (1878) 376, 415; *ibid.* (1878-9) 161; Parl. Deb. (1878-9) 245, c. 1104.)

### 3. OFFICES GOVERNED BY SPECIAL RULES

A brief mention should be made of certain non-political offices whose position with regard to qualification or disqualification seems to depend

(*t*) The Ecclesiastical Commissioners Act, 1850, s. 3.

(*u*) The Charitable Trusts Act, 1853, ss. 1 & 5.

(*a*) The Regional Commissioners Act, 1939, a war emergency measure, expressly exempted from disqualification the Commissioners to be appointed and paid under that Act.

in the main on considerations belonging to what has been termed earlier the "Privilege" phase of the Commons' attitude to offices of profit. The offices referred to are those of Ambassadors, Sheriffs and Clergy.

(1) **Ambassadors.**—It is doubtful whether Ambassadors are disqualified under the existing law, and undoubtedly they were not disqualified in earlier times.

During the "Privilege" phase of their attitude to office under the Crown (see p. 199), the Commons repeatedly decided that Members, appointed ambassadors, did not vacate their seats (2 Hatsell, 22). Hatsell thinks this a wise decision, for, otherwise, the king would have had an easy way of getting rid of Members he disliked, since an "embassy" at this period covered a wide range of missions abroad, including special missions of quite short duration. After 1707 the House had several occasions for determining how the position of Members sent abroad on missions by the king was affected by the statute of that year. In 1711 and 1713 the House of Commons vacated the seats of Members in this position and ordered the issue of new writs. But in 1714 the question whether the office of Commissary to treat with the French was a new office within the meaning of the Act of 1707, was negatived. And so, in 1714, was the question whether the office of envoy to the Court of Vienna was included in the disability of the statute. The ground for these decisions is not very clear. If a commissioner sent to France or an envoy to Vienna did not hold a new office, presumably he held an old office and had, under s. 25 of the statute, vacated his seat on accepting it. Possibly, these offices were regarded for some technical reason as not being held directly from the Crown, and so as falling neither under s. 24 nor under s. 25 of the statute. Possibly they were regarded as not being offices of profit. Or, possibly, the Commons, in view of the precedents of their old decisions, decided that an exception for ambassadors was implied in the new statute. In any case, even if the Commons were wrong in allowing common law to override statute law in this instance, there was no appeal from their decision—unless indeed the common informer had intervened—and it has been accepted as valid to the present day. In 1851, when a Member vacated his seat on the ground that he had been appointed a minister plenipotentiary, the House ordered a supersedeas to the writ and the Member subsequently accepted the Chiltern Hundreds. C. J. (1851) 3, 12, 94; Parl. Deb. (1851) 114, c. 134.

(2) **Sheriffs.**—The disqualification of Sheriffs is a limited disqualification. Briefly, a sheriff is capable of election to Parliament except in a constituency for which he is acting as returning officer (see p. 210). But a Member cannot be appointed sheriff.

Historically the grounds on which the sheriff was disqualified seem to have been twofold. (1) He was a royal officer with important duties in his county and under oath to reside there during his year of office. (2) He received the election writs and was returning officer for his county. (For details, see H. C. 120, pp. 148–9, 160–2 (1940–41).)

In 1372, what is now generally considered an ordinance, and not a statute, was made, which provided "that hereafter no sheriff for the time he is sheriff be returned nor accepted Knight of the Shires" (1 Statutes of the Realm, 394; 2 Rot. Parl. 310), and in the following year the "Nolumus" clause was added to the writs of election (where it remained till 1872), which prohibited the election of a sheriff for any constituency—"Nolumus autem quod tu, nec aliquis alius Vicecomes . . . aliquialiter sit electus." (See Rogers on Elections, 1928 ed. II, 5 n.). In spite of this, a number of sheriffs

were returned during the fifteenth and the first half of the sixteenth centuries, and a review of subsequent cases seems to show that there was no general prohibition against the election and sitting of sheriffs (see details in H. C. 120, p. 161 (1940-41)). There is no recorded instance of a sheriff, elected for a borough outside his jurisdiction, being held to be unduly elected or incapable of retaining his seat.

The other aspect of a sheriff's disqualification is that which prevents a sitting Member being appointed sheriff. Six cases can be found of Members appointed to be sheriff during the last half of Elizabeth's reign (Hulme, *Art. in Journ. of Modern Hist.* I, p. 362). In four of these cases the Commons gave the Members leave to depart to their counties (D'Ewes, 38-39). (For further detail see H. C. 120, p. 162 (1940-41).) In 1621, Sir Thomas Thynne, appointed sheriff of Gloucestershire, was given licence to depart (2 Nicholas, *Proceedings and Debates of the House of Commons* in 1620 and 1621, 177-8). In the debate on this question a Member, Mr. Alford, summed up the attitude of the Commons by saying "there is noc Parliament man but knoweth that, when Members appointed sheriff have asked leave to depart some tymes they have leave and some tymes they are denyed it." By the reign of William III, however, the House had come to recognize the existence of an incompatibility between the duties of a Member and those of a sheriff and by resolutions of 1675 and 1689 had declared it to be a breach of privilege to nominate a Member for sheriff (C. J. (1667-1687) 378; *ibid.* (1688-1693) 325).

(3) **Clergy.**—Church of England clergymen and Scottish ministers (*b*) and Roman Catholic priests (*c*) are disqualified by statute. Holders of ecclesiastical office in the Church of Wales are exempted from disqualification by s. 2 (4) of the Welsh Church Act, 1914. Ministers of Non-conformist churches are not disqualified; but persons attending divine service at Scottish episcopal chapels where the Royal Family are not prayed for, are still disqualified by statute (*d*).

It is somewhat remote from reality to include Church of England clergy in the category of holders of offices of profit under the Crown. It was on this ground, however, that the House of Commons (Clergy Disqualification) Act, 1801, which made the exclusion of clergy of the Church of England statutory, was recommended to the House of Commons. The pre-existing common law disqualification of the clergy dates from the early period when the attitude of the Commons was determined by considerations of privilege and was based upon resolutions of the House (for details see H. C. 120, pp. 149-50 (1940-41)).

The old constitutional ground for the exclusion of clergymen of the Church of England, that they were taxed by Convocation and represented in Convocation—the ground on which Prebendary Nowell was excluded in 1553 (C. J. (1547-1628) 27)—was not tenable in 1801, when it was deemed expedient to keep Horne Tooke out of the House. The new ground of exclusion, on which the Act of 1801 was justified by the Addington administration, was that, as the benefices of a great number of the clergy were in the direct gift of the Crown, or of the nobility, the admission of clergymen would diminish the purity and impair the independence of the House of Commons (Parl. Hist. XXXV, 1331).

By the Act of 1801 it was enacted that no person who had been ordained

(b) By the House of Commons (Clergy Disqualification) Act, 1801.

(c) By the Roman Catholic Relief Act, 1829, s. 9.

(d) The Scottish Episcopalians Relief Act, 1792, s. 13.

“to the office of priest or deacon, or being a minister of the Church of Scotland, is or shall be capable of being elected to serve in Parliament as a member of the House of Commons.”

The Act of 1801 thus put clergymen of the Established Church in England, Ireland and Scotland on the excluded list; and in 1829, when Roman Catholics again became eligible as members of the House of Commons, a clause was inserted in the Roman Catholic Relief Act of that year, adding priests of the Church of Rome to the list of persons incapable of election to the House of Commons. Finally, by the Clerical Disabilities Act of 1870, it became possible for any clergyman of the Church of England legally to divest himself of his orders and so to render himself eligible for election to Parliament.

#### 4. OTHER MISCELLANEOUS OFFICES

(1) **Service in the armed forces of the Crown.**—Although the law relating to many branches of the armed forces is somewhat obscure, it may be said in general that Members receiving commissions in the armed forces are not disqualified by statute.

The Succession to the Crown Act itself drew a distinction between service under the Crown in the Armed Forces and other “offices.” By s. 27 (28) it was provided that the disqualifying provisions should not extend to any member of the House of Commons, being an officer in Her Majesty’s Navy or Army who shall receive any new or other commission in the Navy or Army respectively. The holding of a commission was clearly not regarded as an absolute disqualification, presumably on the principle that it was an old office. But the same exception has been extended, by construction, to a commission in the Royal Marines, although the establishment may not date back beyond 1755.

*Boscawen’s case, 1759.* When Admiral Boscawen was appointed general of the Marines in 1759, there was a doubt whether he would vacate his seat by such acceptance, but the law officers’ opinion was against vacation. (2 Hatsell, 62 n.)

The effect of s. 27 of the Act of 1707 was to make it unnecessary for a Member who was a serving officer to seek re-election if he received any new or other commission. Thus the Act has been held not to disqualify for acceptance of the office of Master-General or Lieutenant-General in the Ordinance (Resolution of 22nd June, 1742, C. J. (1741–5) 284), or of military governorships, by Members already holding commissions in the Army (9th June, 1733, C. J. (1732–7) 201; also 17 Parl. Hist. 538; 2 Hatsell 48, 52 n.; C. J. (1782–4) 970; but cf. *ibid.* (1798–9) 292). Before the passing of the Re-election of Ministers Acts, 1919 and 1926, a Member receiving a commission in the Army or Navy for the first time vacated his seat, but could be re-elected. For instances of the issue of new writs for this reason see C. J. (1727–32) 376; *ibid.* (1745–50) 9; *ibid.* (1757–61) 660 and *ibid.* (1782–84) 429. This section of the Succession to the Crown Act is by its terms restricted to officers. Further it may leave uncertain whether Forces or Corps of the Army or Navy brought into existence since its date might not be held to be outside the exempting provision, membership of them being treated as a new office. The Air Force has its own comprehensive exempting provision in s. 4 of the Air Force (Constitution) Act, 1917, and the Territorial Force in the Territorial and Reserve Forces Act, 1907, ss. 23 (1) and 36. On the other hand, there was no exempting provision, for example, in the Royal Naval Reserve Acts 1859 to 1927. When therefore the war of 1939–45



began, there was a considerable area over which membership of the Armed Forces of the Crown might disqualify, and the House of Commons (Service in His Majesty's Forces) Act, 1939, was passed in general terms as a temporary war measure to exempt from disqualification Members belonging to any of His Majesty's Forces. A similar, but less extensive, war-time exemption was enacted in 1914 by the House of Commons (Commissions in His Majesty's Forces) Act, which provided that the acceptance of any commission in His Majesty's Forces did not disqualify a sitting Member, or disqualify for membership during the existing Parliament.

*Officers on the active list in normal times.*—Officers on the active list or on active service in normal times—i.e., in periods not affected by emergency legislation—are prohibited from becoming members of the House of Commons by their own service regulations.

The service regulations are now embodied in the Order in Council of 25th July, 1927, entitled the Servants of the Crown (Parliamentary Candidature) Order, 1927, and regulations made thereunder. Briefly, the effect of this Order is to prevent officers and men of the regular forces from being members of the House of Commons, so long as they remain on the active list. The prohibition does not extend to retired regular officers, officers or men on the Reserve or on half-pay, nor to officers or men of the auxiliary forces. In regard to admirals of the fleet, field marshals, and marshals of the Royal Air Force, who are technically always on the active list, the prohibition only applies to them while holding an appointment.

(2) **Pension-holders.**—Persons having any pension from the Crown during pleasure are disqualified for membership of the Commons by s. 24 of the Succession to the Crown Act, 1707, but by a later statute holders of civil service pensions under the Superannuation Acts—which also apply to the diplomatic service—are exempted from disqualification.

The Pensioners Civil Disabilities Relief Act, 1869, recited that doubts had arisen as to whether the pensions granted to those who had held civil offices in Her Majesty's Service under statute brought those persons within the disqualifications imposed by the Succession to the Crown Act. It therefore provided that the receipt of such a pension should not disqualify. There appears to be no statute which deals in the same way with pensions to those who have served in the Armed Forces. The explanation may lie in the fact that civil servants were in the main disqualified by the House of Commons Disqualification Act of 1741 absolutely from membership, while no such absolute disqualification attached to those who held commissions in the Armed Forces (see above). It might therefore have been thought unnecessary to suggest that, an officer on full pay not being disqualified, any disqualification should attach to him when he was placed on half-pay by way of pension. It is possible that the pensions under statute to civil servants were not pensions during pleasure within the meaning of the Act of 1707. This is indicated by the form of the Act of 1869 as one for the removal of doubts, but in debate on the passing of the Act it was stated that, in the judgment of some lawyers, the Act of 1707 did exclude from the House of Commons a person who had retired from the Civil Service on superannuation, though it was "an accidental and undesigned disability." (Parl. Deb. (1868-9) 196, c. 83-4.)

(3) **Returning officers.**—A returning officer is incapable of being elected for the constituency for which he makes, or ought to make,

returns to Parliament (e)—a disqualification obviously based on the nature of the duties of his office—but, under s. 30 of the Representation of the People Act, 1918, it is provided that the duties of a returning officer at a parliamentary election (other than a university election), except those duties which the returning officer reserves to himself and undertakes to perform in person, shall be performed by the registration officer as acting returning officer, and that a returning officer, all of whose duties are discharged by the acting returning officer, shall not be disqualified by reason of being returning officer for being a candidate at the election (see p. 207). This provision does not extend to Scotland (f).

(4) **Offices retained for purposes of resignation or re-election.**—*Resignation of Members.*—It is a settled principle of parliamentary law that a Member, after he is duly chosen, cannot relinquish his seat (g); and, in order to evade this restriction, a Member who wishes to retire accepts office under the Crown, which legally vacates his seat and obliges the House to order a new writ. The offices usually selected for this purpose are the offices of steward or bailiff of his Majesty's three Chiltern Hundreds of Stoke, Desborough, and Burnham, or that of the steward of the manor of Northstead, which were undoubtedly offices or places of profit in former times; and the legal fictions of their existence and of their disabling effect on Members have been carefully preserved in the various statutes relating to disqualification (h).

These offices are to-day purely nominal and are ordinarily given by the Chancellor of the Exchequer to any Member who applies for them (Parl. Deb. (1893-4) 8, c. 50; *ibid.* (1902) 103, c. 212). Each office is only retained until the Chancellor receives application from another Member who wishes to retire.

The wording of the form of appointment makes it plain that they were once offices of profit. Thus when the new holder takes over the appointment the Chancellor "hereby revokes and determines, together with all wages, fees, allowances and other privileges and pre-eminences whatsoever" the tenure of the previous holder. The practice is to issue the appointment to the Chiltern Hundreds and Manor of Northstead alternately, so that, if desired, two Members can vacate their seats at the same moment. All words which formerly attached honour to the appointment are omitted, in order to remove any scandal in granting these offices to persons unworthy of the favour of the Crown, who may desire to vacate their seats in Parliament; the words, "reposing especial trust and confidence in the care and fidelity of," etc. being first omitted in the year 1861. According to Hatsell, the practice of applying for the Chiltern Hundreds began about 1750 (see 2 Hatsell, 54 n.). The offices of Steward of the Manors of East Hendred and Hempholme were last used for this purpose in 1840 and 1865 respectively, but statutory provision for vacation of seat on appointment to them remains (Re-election of Ministers Act, 1919, sch.). See also Report of Select Committee on House of Commons (Vacating of Seats) H. C. 278, pp. 57-8 (1894).

*Acceptance of Chiltern Hundreds, etc. during a recess.*—These offices can be

(e) Rogers on Elections, 1928 ed., ii, 5-7; 2 Hatsell, 30-34; 4 Doug. El. Cas. 87, 123; C. J. (1667-87) 725 (Thetford Case); Wakefield Case, Bar. & Aust. 295.

(f) Representation of the People Act, 1918, s. 43 (13).

(g) C. J. (1547-1628) 724; *ibid.* (1640-42) 201.

(h) See e.g. Re-election of Ministers Act, 1919, sch.; and H. C. 120, pp. xix-xx (1940-41).

granted during a recess (Parl. Deb. (1892) I, c. 462); but the statutory power conferred on the Speaker, for the issue of a writ to fill up a vacancy caused by acceptance of office (see p. 181), does not extend to vacancies caused by the acceptance of these stewardships. The acceptance of any of these offices, however, during a recess at once vacates the seat of a Member, and qualifies him to be elected elsewhere, although no new writ can be issued for the place which has become vacant by his acceptance of office until the House re-assembles.

*Chiltern Hundreds applied for by disqualified Members.*—In the session of 1847–48, a Member, having had doubts suggested whether he had not been disqualified at the time of his election, as a contractor (see p. 214), thought it prudent not to take his seat, in case of being sued for the penalties under the Act. He was, however, unwilling to admit his disqualification; and he accordingly applied for the Chiltern Hundreds. Doubts were raised as to the propriety of allowing him to vacate his seat by this method: but it was agreed that, as the time had expired for questioning by an election petition the validity of his return, and as the House had no cognizance of his probable disqualification, there could be no objection to his accepting the office.

Unsworn Members can avail themselves of these offices (Baron Lionel de Rothschild, C. J. (1849) 430; *ibid.* (1857) 343); and when Mr. Bradlaugh voted, on the 11th February, 1884, being an unsworn Member (see p. 162), the office of the Chiltern Hundreds was granted to him, whereon the new writ was issued to supply the vacancy which by his conduct had taken place (C. J. (1884) 46).

*Chiltern Hundreds withheld.*—The Chiltern Hundreds have sometimes been refused. (See letter of Mr. Goulburn to Viscount Chelsea, H. C. 544 (1842), and see 3 Lord Dalling, *Life of Lord Palmerston*, 103). In 1775, Lord North refused to give one of these offices to Mr. Bayly, who desired to stand for Abingdon, in opposition to a ministerial candidate, saying, "I have made it my constant rule to resist every application of that kind, when any gentleman entitled to my friendship would have been prejudiced by my compliance," (18 Parl. Hist. 418, n). "The office of steward of the Chiltern Hundreds is an appointment under the hand and seal of the Chancellor of the Exchequer." (Colchester, i, 175.)

*Alternative Offices to effect Resignation.*—A Member may also attain resignation by admitting some other disqualification for sitting and voting. (See cases of Mr. Southey, 1826 (want of property qualification), C. J. (1826–27) 28, 108; Mr. Cowan, 1847 (share in stationery office contract), *ibid.* (1847–48) 17, 102; Mr. Ramsay, 1874 (share in post office contract), *ibid.* (1874) 12.) Hatsell mentions the case of a Member in 1779 "not being able to attain the appointment to the Stewardship of the Chiltern Hundreds," who applied for an alternative office (2 Hatsell, 54 n).

*Re-election.*—By the law of Parliament a Member already returned for one place is ineligible for any other until his first seat is vacated; and hence it is the practice for a Member, desiring to represent some other place, to accept the Chiltern Hundreds or Manor of Northstead (or of East Hendred or Hempholme, see p. 211), now the only surviving "old" offices under the Crown the acceptance of which requires vacation of a seat (*i*). By this means the Member renders himself eligible at the new election.

(i) See p. 211; also Re-election of Ministers Act, 1919, Sch.

*Vacation of seat for purposes of re-election.*—Sir Fitzroy Kelly, solicitor-general, having been returned for Harwich on the 15th April, 1852, immediately afterwards announced himself as a candidate for East Suffolk, the election for which county was appointed to be held on the 1st May. He had been returned for Harwich without opposition, yet on the 29th April a petition was lodged against his return, in the hope of preventing the Treasury from granting him the Chiltern Hundreds. But as his seat was not claimed, he at once received the required appointment, and was returned for East Suffolk, and took his seat again, before a new writ had been issued for Harwich. The entry in the votes is as follows: "Sir Fitzroy Kelly having, since his return for the borough of Harwich, accepted the office of steward of her Majesty's Manor of Hempholme, in the county of York, and being returned for the eastern division of the county of Suffolk, took the oaths and his seat." (Votes, sess. 1852, p. 285).

In February, 1865, The O'Donoghue, being Member for Tipperary, offered himself as a candidate for Tralee; but before the day of election, he qualified himself to be elected by accepting the Chiltern Hundreds. (C. J. (1865) 4, 50).

In 1878, Mr. Wingfield Malcolm, Member for Boston, accepted the Chiltern Hundreds, in order to qualify himself as a candidate for the county of Argyll. (C. J. (1878) 402).

(5) **Offices without salary.**—What constitutes an office, or place, one of profit is often a question of difficulty as well as urgency, in view of the heavy penalties which a common informer might obtain against a Member who inadvertently sits while holding a disqualifying office (see below, p. 215). The principle that has been adopted is that, if emoluments have ever attached to the office, the fact that emoluments are not received by the particular holder is irrelevant (*j*). The best illustration perhaps of this is the acceptance of the Stewardship of the Chiltern Hundreds, which vacates the seat on the basis that the Stewardship is an office or place of profit, though no emoluments are, in fact, received (see above, p. 211). This matter was discussed in a debate in 1906 (*k*). Offices without salary are by no means necessarily excepted from the disqualifications affecting offices of profit (*l*).

Because of the complexity of this question, acts of indemnity to save office-holders from possible penal consequences have frequently been resorted to. When in 1941 a sitting Member (Mr. A. Jenkins) had accepted the office of chairman of the local appeal board for a Royal Ordnance factory, it was found necessary to pass the Arthur Jenkins' Indemnity Act, 1941. In the words of the Minister who moved the second reading, this was "not an appointment to which there is a salary attached in the ordinary sense of the word, but there is a certain small sum payable per sitting. Mr. Jenkins . . . did not take that fee, but . . . there is no doubt that, as the law now stands, it is an office of profit under the Crown, though it is not in the colloquial sense an office at all, and in this particular case, though the fee was payable, it was not accepted, so there was no profit . . ." (H. C. Deb. (1941-2) 376, c. 1408. See also H. C. 3 (1945-46).)

*Members not disqualified by acceptance of fees from the Crown for publications.*—On 7th June, 1944, in answer to a question, the Minister

(*j*) But see H. C. 131 (1924-5).

(*k*) Parl. Deb. (1906) 152, c. 97.

(*l*) See e.g. H. C. 3 (1945-46); for detailed analysis and cases, see H. C. 120, pp. 150-54 (1940-41).

of Information said that he was advised that payment by his Ministry to certain Members of fees for articles supplied for publication did not involve disqualification under the Disqualification Acts (*m*).

#### GOVERNMENT CONTRACTORS

Government contractors, who may be regarded as analogous to office-holders, being supposed to be liable to the influence of their employers—the executive government—and therefore open to one of the objections against office-holding, are disqualified by statute.

The House of Commons (Disqualification) Acts of 1782 and 1801, provide that any person who, directly or indirectly, himself or through a trustee, holds or undertakes any contract or commission, for or on account of the public service, is incapable of being elected; and if a Member becomes a public contractor, the election is void, and there is a penalty of five hundred pounds for every day of sitting and voting while under this disability. For cases of issue of a writ in consequence of a Member holding a contract, see C. J. (1880) 241; C. J. (1904) 15 and 16.

The Acts also impose a penalty of five hundred pounds upon any person who admits a member of the House of Commons to a share of a contract (see Report on case of Sir Sydney Waterlow, C. J. (1868-9) 82; H. C. 78 (1868-9)). A person is not, however, rendered incapable of being elected or of sitting and voting if the contract has been executed by him at the time of his election or at the time of sitting and voting (*Royse v. Birley*, 4 L. R. C. P. 296; *Tranton v. Astor* [1917] 33 T. L. R. 383), and the Acts do not affect incorporated trading companies contracting in their corporate capacity.

In 1915 it was ruled that the "public service" to which the Acts refer was not confined to the public service of the United Kingdom, nor need be paid for out of moneys voted by Parliament; but meant the service of the Crown anywhere (Privy Council judgment in *Samuel's case*, [1915] A. C. 514).

*Sir S. Samuel's case*, 1912-15.—In 1912, Sir S. Samuel, a Member, was partner in the firm S. Montagu & Co., which accepted instructions to buy silver for the Secretary of State for India in Council, while Sir S. Samuel was a sitting Member. A select committee considered the question, but in view of the questions of law involved, recommended that the case should be referred to the Judicial Committee of the Privy Council (C. J. (1912-13) 419, 430, 519; H. C. 406, p. iii (1912-13); H. C. 452, p. iii (1912-13)). The Judicial Committee, whose report was presented as a command paper, decided that on the facts reported by the select committee the Member was disabled from sitting and voting in the House of Commons (Cd. 6748 [1913] A. C. 514). The House resolved that the Member had vacated his seat and a new writ was ordered (C. J. (1913) 83). For actions taken by common informers against the Member for penalties for improperly sitting and voting, see *Forbes v. Samuel* [1913], 3 K. B. 706, *Burnett v. Samuel*, *ibid.* 742, *Bird v. Samuel*, 30 T. L. R. 323. A bill to indemnify the Member was presented, but was not proceeded with (C. J. (1913) 129).

In 1931, a further clarification of the Acts was found necessary. Doubts had arisen as to the scope of the Acts. While their original intention had undoubtedly been to prohibit contractors who were engaged in supplying goods to Government departments from also being Members, it was feared that their wording under modern conditions might be calculated to disqualify,

(*m*) H. C. Deb. (1943-44) 400, c. 1355.

for example, all those Members who had telephones (H. C. Deb. (1930-31) 250, c. 364). The House of Commons Disqualification (Declaration of Law) Act, 1931, was therefore passed to limit the extent of the Acts of 1782 and 1801 (described above) to "contracts, agreements or commissions for the furnishing or providing of money to be remitted abroad or wares and merchandise to be used or employed in the service of the public." (s. 1.)

**Financial contracts.**—Before the passing of the 1931 Act (described above) the position of subscribers to Government loans was also a matter of some doubt, since such subscribers had entered into a money contract with the Government.

In 1855, the case of a Member (Baron Rothschild) making a loan to the Government was considered by a select committee, who reported that such a loan was not a contract within the true intent and meaning of the House of Commons (Disqualification) Act, 1782 (C. J. (1854-5) 325; H. C. 401 (1854-5)). But in various Finance Acts passed during the war of 1914-18, it was thought necessary to protect subscribers to war loan or treasury bills, as well as Members depositing or exchanging securities with the Treasury, or whose property was requisitioned by the Government during the war. (Finance Act, 1914 (Session 2), s. 14 (2); War Loan Act, 1915, s. 1 (2); Finance Act, 1916, s. 58 (2); War Loan Act, 1916, s. 1 (2); War Loan Act, 1917, s. 1 (2); War Loan Act, 1918, s. 1 (2)). As the declaratory Act of 1931 specifically interpreted the Acts of 1782 and 1801 as applying to "contracts . . . for money to be remitted abroad," a clause was inserted in the East India Loans Act, 1937 (s. 11) exempting from disqualification Members of the House of Commons who might be subscribers to East India loans.

#### PENALTIES

Under the Succession to the Crown Act, 1707, and supplementary legislation, the election of a disqualified person is void; but, in addition, there are heavy penalties for sitting or voting when disqualified, and these are recoverable at the instance of a common informer (n). There appears to be no case of an action at law by a common informer to recover the statutory penalty against a Member disqualified on the ground of office-holding. But such an action has been brought in the analogous case of disqualification by the holding of a Government contract. The official copy of the division lists (see p. 411) is accepted as a sufficient record to establish proof of voting (o). Examples of actions by common informers are those of *Forbes v. Samuel*, and *Burnett v. Samuel* in 1913, each claiming a penalty of £46,500 (p).

#### EXTINCT DISQUALIFICATIONS

Formerly, a number of other disqualifications existed, many of which were of statutory effect until a comparatively recent date. There was a (temporary) disqualification on appointment to all "old" offices, under s. 25 (26) of the Succession to the Crown Act, 1707. Disqualifications were also effected by forms of oath, and by property and residence

(n) Sec 7 & 8 Will. 3, c. 25, s. 7; 6 A., c. 41, s. 28 (c. 7 in Ruffhead); 1 Geo. 1, stat. 2, c. 56, s. 2; 15 Geo. 2, c. 22, s. 2; 22 Geo. 3, c. 45, s. 9; 41 Geo. 3 (U.K.) c. 52, s. 6; 41 Geo. 3 (U.K.), c. 63, s. 2.

(o) *Forbes v. Samuel* (1913) 3 K. B. 730.

(p) [1913] 3 K. B. 706 and 742.

requirements. Formerly, too, disabilities attached to King's Counsel, and to women.

**Petitioning candidates.**—At one time it was doubted whether a candidate claiming a seat in Parliament by petition was eligible for another place before the determination of his claim ; but it was resolved, on the 16th April, 1728, " that a person petitioning, and thereby claiming a seat for one place, is capable of being elected and returned, pending such petition " (q).

In case the petitioner should establish his claim to the disputed seat, the proper course would appear to be to allow him to choose for which place he would serve, in the same manner as if he had been returned for both places at a general election (see p. 183). It seems also that a person returned for one place may petition for another (Rogers on Elections, 1928 ed., ii, 164).

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(q) C. J. (1727-32) 135 ; 2 Hatsell, 73.

## BOOK. II

# PRACTICE AND PROCEEDINGS IN PARLIAMENT: PUBLIC BUSINESS





## CHAPTER XII

### MACHINERY OF PARLIAMENT: OFFICERS, RECORDS AND PAPERS

Before entering upon the detailed account of the various specialized forms of modern procedure which is the subject of this book, it will be convenient to dispose of certain preliminary matters, some knowledge of which is necessary in order to understand the manner in which Parliament performs its duties. These matters are of a miscellaneous character. Together they may be regarded as forming the background or setting of parliamentary procedure; and the information which will be given is intended to show briefly the environment in which Members of both Houses work, and the organization, personal and material, which is provided to regulate the functioning of both Houses, to enable their Members to co-operate effectively and to provide them with facilities for securing the information necessary to the performance of their duties.

These matters are dealt with in the following order:—

1. Palace of Westminster, the Chambers of the two Houses, and accommodation for Members and visitors.
2. Officers of the two Houses.
3. Party machinery in Parliament.
4. Parliamentary Papers and publications, comprising—
  - A. Papers dealing with the daily business of the two Houses.
  - B. Accounts, Papers, and Records.

#### 1. PALACE OF WESTMINSTER GENERAL ARRANGEMENTS

##### HISTORY

The Palace of Westminster which comprises the present Houses of Parliament includes most of the site of an old royal palace. This old palace was occupied continuously by the House of Lords soon after it ceased to be a principal royal residence following damage by fire in 1512. The Commons, who from 1377 had met in the Chapter House of Westminster Abbey, were granted the use of St. Stephen's Chapel within the Palace in 1547. The Palace was so extensively damaged by fire in 1834 that it was replaced by the present buildings erected between 1840 and 1852. The connection between Parliament and a royal palace is by no means accidental and is explained by the part played by the medieval kings in creating Parliament.

##### CONTROL

The Palace of Westminster is in the custody of the Lord Great Chamberlain—an hereditary officer of state (a), but each House, while

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(a) See H. C. 212, p. viii (1901); and H. C. 64 (1944-45), which describes the various degrees of authority held by officers within the Palace.

in occupation of the part assigned to it, has the custody and service of that part, this control being exercised in the Lords through the Gentleman Usher of the Black Rod, and in the Commons by the Serjeant at Arms (*b*). The Lord Great Chamberlain retains his authority over the buildings of both Houses of Parliament when those Houses are not sitting. The Lord Great Chamberlain therefore issues orders to strangers to view the Houses on Saturdays, even during the session. On the appointment of each new Serjeant at Arms of the House of Commons the Lord Great Chamberlain issues warrants for the custody of all parts of the Palace of Westminster occupied by the House of Commons and its officers.

Repairs or structural work in the Palace are carried out under the authority of the Lord Great Chamberlain by the Ministry of Works. The Ministry is also the successor to the ancient Keeper of the Palace of Westminster, originally an hereditary office, in accordance with a Treasury Minute of 1884.

#### ACCOMMODATION

There are four main floors in the Palace of Westminster. On the lowest or terrace floor are the rooms of certain Ministers, dining-rooms for visitors, kitchens, etc. Next, the principal floor contains the two chambers, with their lobbies and communicating corridors (see below), the Royal gallery, the King's robing room, the two libraries, Members' dining, reading, and smoking-rooms, etc., rooms of important officers of the two Houses and of the departments in their charge, offices of the party whips and post offices. The floor above this, known as the Committee floor, is chiefly occupied by committee rooms (see p. 241) and offices. The third or top floor contains rooms for clerical purposes, telephone exchange and Members' typing room.

#### CHAMBERS OF THE TWO HOUSES

An account is here given of the surroundings in which Parliament carries on its work in normal times.

Besides the two chambers of which a description follows there are, in the two Houses, altogether twenty-one committee rooms of varying sizes where a mass of the detailed work of legislation is done (see pp. 576-631).

Enforced changes consequent upon the war are described in the section on Emergency Procedure (pp. 812-3). Reference should also be made to the report of the select committee on House of Commons (Rebuilding) (H. C. 109 (1943-44)) which describes the plan on which the Commons chamber, destroyed during an air raid in 1941, is being rebuilt.

The Chambers in which the Lords and Commons respectively meet and debate are connected by a corridor leading through the inner lobbies of the two Houses (which are reserved for Members and officials and such members of the public as are on the "lobby list") and the great central hall. Along this corridor which runs south from the Commons to the Lords,

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(*b*) Report from Select Committee of House of Lords on Office of Gentleman Usher of Black Rod (H. L. 140 (1906)).

pass the messages borne by Black Rod summoning the Commons to attend the King or His Majesty's Commissioners in the Lords, the processions of the Commons headed by the Speaker and the mace, and the messages relative to bills and other matters borne by their clerks from one House to the other.

Though differing in size and decoration, the general arrangement of both Chambers is the same. Both are rectangular in shape, are surrounded by galleries and have at one end the seat of the presiding officer, which faces the Table of the House, and at the other a technical barrier known as the bar. Unlike most foreign chambers, both Houses are divided lengthwise by a broad gangway with the benches on each side facing each other, an arrangement which is said to facilitate the division of Members into two main parties; and Members speak from their places and not from a special "tribune" or "rostrum." In both Houses the benches to the right of the Speaker are occupied by the Members of the Government and their supporters, those to the left by the members of the party or parties in opposition; in the House of Lords, however, provision is also made by means of cross benches for peers who do not wish to attach themselves to any party, whereas no such provision is made in the House of Commons. In both Houses the galleries provide accommodation for strangers, the press and government officials, but in the House of Commons the side galleries are largely reserved for Members (only 346 of whom can be accommodated on the floor of the House) and a Member may speak from these galleries (*c*) but not from below the bar.

#### PLACES OF MEMBERS

(1) **Lords.**—The Act of 31 Henry 8, "For Placing of the Lords" (*d*) is still the only arrangement formally authorized by the standing orders; but in practice the arrangement has been modified for the sake of convenience in debate on modern party lines except that the Bishops still sit together in the upper part of the House on the right hand of the throne, and a newly created peer or a peer raised to a higher grade in the peerage is, upon his introduction, placed on the bench appropriate to his order and his precedence recorded in the Journals. Apart from this a peer's seat is determined not by his rank but by his political convictions.

(2) **Commons.**—In the Commons no place is allotted to any Member: but by custom the front bench, on the right hand of the chair, called the treasury or government bench, is appropriated for the members of the administration although on the opening of a new Parliament the Members for the City of London claim, and generally exercise, the privilege of sitting on this bench. The front bench on the opposite side, though other Members occasionally sit there, is reserved for the

(*c*) See H. C. 109 (1943-44) Qns. 178, 323 and 567.

(*d*) Cap. 10. Ordered to be added to the Book of Standing Orders by way of Appendix, 9 February 1825. The standing order was enforced 20 January 1640, 10 February 1640, and 1 February 1771; L. J. (1736-41) 572, 593; *ibid.* (1770-73) 47; see also Parl. Deb. (1843) 69, c. 1806.

leading members of the Opposition who have served in offices of state (*e*). It is not uncommon for old Members, who are constantly in the habit of attending in one place, to be allowed to occupy it as a matter of courtesy (*f*).

Members who enjoy no place by usage or courtesy, except Members serving on select committees, must, pursuant to S.O. Nos. 81 and 82, be present at prayers if they desire to secure a seat until the rising of the House; nor may a Member's name be affixed to a seat in the House before the hour of prayers. Attempts to secure a seat, by placing cards on the seats before prayers, have been prevented by order of the Speaker to the Serjeant (*g*). A Member, however, may leave a card upon a seat, in order to indicate his intention of acquiring a right to the seat by a subsequent attendance at prayers; this "prayer card," which is dated, may be obtained by Members personally from an attendant who is on duty in the House for that purpose from eight o'clock in the morning until the House meets. A Member may obtain a card only for himself, and the obligation formerly imposed upon a Member to remain within the precincts of the House in order to secure his seat is no longer in force (*h*).

*Seats of Members serving on select committees.*—Pursuant to resolutions of the House, a Member serving on a select committee (*i*) or a departmental committee (*j*) may, without being present at prayers, retain a seat in the House by affixing thereto a card (a pink card), which is delivered to him for that purpose on his application. By a ruling of the Speaker of 23 June, 1933, a similar facility was granted to any Member serving on a standing committee which meets early in the afternoon. No seat can be secured by a card, paper, or gloves, placed thereon, except as a matter of courtesy and not of right (*k*).

### ATTENDANCE OF MEMBERS

On ordinary occasions the attendance of Members upon their service in Parliament is not enforced by either House: but, when any special business is about to be undertaken, steps have been taken to secure their presence. In the House of Lords, however, the name of every Lord who is present during the sitting of the House, is taken down each day by the Clerk and entered in the Journal.

Formerly Members of the House of Commons who absented themselves were directed to be punished (*l*). The penalty upon a Member for absence was the forfeiture of his wages; and although that penalty is no longer applicable, the legislative declaration of the duty of a Member remains on the statute book (*m*).

(*e*) For the allocation of seats to a party by arrangement, see Mr. Speaker's remarks H. C. Deb. (1912-13) 44, c. 2267, 2507; *ibid.* (1914) 58, c. 49, 1092; see also *ibid.* (1919) 112, c. 755; *ibid.* (1939-40) 361, c. 27-8.

(*f*) Members thanked by the House, by courtesy retain their seats, 2 Hatsell, 94.

(*g*) Parl. Deb. (1866) 182, c. 1764.

(*h*) H. C. Deb. (1919) 113, c. 1291.

(*i*) Parl. Deb. (1888) 324, c. 230.

(*j*) H. C. Deb. (1927) 208, c. 1064.

(*k*) Parl. Deb. (1842) 62, c. 489; *ibid.* (1880) 252, c. 1200.

(*l*) By Act 5 Rich. 2, c. 4.

(*m*) 6 Hen. 8, c. 16.

Numerous orders are to be found in the Journals, for summoning absent Members to attend the service of the House (*n*).

## CALL OF THE HOUSE

(1) **Lords.**—When any urgent business was deemed to require the attendance of the Lords, under a usage now in abeyance, an order was made for the House to be called over; and this order has been enforced by fines and imprisonment upon absent Lords (*o*); but a call of the House, without penalties, still takes place on the occasion of the trial of a peer (*p*).

(2) **Commons.**—When the House of Commons was ordered to be called over, it was usual to name a future day which would enable Members to attend from all parts of the country; and the order was accompanied by a resolution "that such Members as shall not then attend, be sent for, in custody of the Serjeant at Arms (*q*). No call of the House has been enforced since 1836 (*r*), and although on several subsequent occasions calls of the House have been ordered, the order was in every case discharged or negatived (*s*).

## LEAVE OF ABSENCE

On 3 March 1801 when a call of the House of Commons was deferred for a fortnight, it was ordered "that no Member do presume to go out of town without leave of the House" (*t*). In the absence of any specific orders to that effect, Members are presumed to be in attendance upon their service in Parliament. It was considered necessary in the past for Members to apply to the House for "leave of absence"; for which sufficient reasons had to be given, such as urgent business, ill health, illness in their families, or domestic affliction. Upon these and other grounds leave of absence was given, though it was occasionally refused (*u*). A Member forfeited his leave of absence if he attended the service of the House before its expiration. The last case of a motion for leave of absence was in 1901 (*a*) and this practice, like a call of the House, has fallen into disuse.

## LATER METHODS OF SECURING ATTENDANCE

The machinery by which the House secured the attendance of Members proved somewhat cumbrous in operation. In modern times the ensuring of attendance in the Commons has become a principal function of the party machinery. The publication of the official Division Lists (see p. 411), showing the number and the names of Members, provides

(*n*) 1 Parl. Hist. 625; C. J. (1642-44) 206; *ibid.* (1688-93) 20; *ibid.* (1714-18) 401 *ibid.* (1782-84) 841; etc.

(*o*) L. J. (1696-1701) 16, 26, 31, 40; *ibid.* (1820) 364, etc. See also *ibid.* 356, *et seq*.  
(*p*) The House was called over on the occasion of the trial of Earl Russell, 18 July, 1901, L. J. (1901) 287; and of Lord de Clifford, 12 December 1935, L. J. (1935-36) 33.

(*q*) C. J. (1697-99) 552; *ibid.* (1708-11) 565; *ibid.* (1711-14) 1814, etc.

(*r*) C. J. (1836) 265; Parl. Deb. (1836) 32, c. 1195.

(*s*) A motion made on 23 March, 1882, for a call of the House was negatived, C. J. (1882) 117.

(*t*) C. J. (1801) 103.

(*u*) C. J. (1820) 338; *ibid.* (1827) 376; *ibid.* (1842) 54. Leave of absence enlarged *ibid.* (1872) 96; motion withdrawn, *ibid.* (1842) 58.

(*a*) C. J. (1901) 218.

an opportunity for a Member to place on record not only his vote but the fact of his attendance; and the Whips of the various parties (see p. 244) make it their duty to secure adequate representation for all important divisions (*b*). The publication of the Division Lists also affords Members an opportunity of demonstrating to their constituents their regular attendance in Parliament.

#### OBLIGATION TO ATTEND COMMITTEES

Attendance upon the service of Parliament includes the obligation to fulfil the duties imposed upon Members by the orders and regulations of the House. Unless leave of absence has been obtained, a Member cannot excuse himself from attending on a committee, when his attendance, as in the case of a private bill committee, is made compulsory by standing or other orders (*c*).

#### ACCESS TO THE HOUSES OF PARLIAMENT

**Obstructions in the streets, etc. Sessional orders.**—To facilitate the attendance of Members without interruption, both Houses, at the commencement of each session, by order, give directions that the commissioner of the police of the metropolis shall keep, during the session of Parliament, the streets leading to the Houses of Parliament free and open, and that no obstruction shall be permitted to hinder the passage thereto of the Lords or Members (*d*). The police accordingly give every facility to Members and officials of the two Houses to cross the streets and approach the Houses of Parliament without interruption and where necessary hold up the traffic for this purpose (*e*).

**Tumultuous assemblages.**—When tumultuous assemblages of people have obstructed the thoroughfares, lobby or passages, orders have been given to the local authorities to disperse them (*f*).

**Limitation on number of persons meeting or repairing to Houses of Parliament in connection with petitions.**—With the same object, it is enacted that not more than ten persons shall repair together to the Houses of Parliament for the purpose of the presentation of a petition; and that not more than fifty persons shall meet together within the distance of one mile from the gate of Westminster Hall, save and except such parts of the parish of St. Paul's, Covent Garden, as are within the said distance, to consider or prepare a petition or other address to both Houses, or either House of Parliament, on any day on which those Houses shall meet and sit (*g*).

#### ADMISSION OF STRANGERS

By the ancient custom of Parliament, and by orders of both Houses,

(*b*) In addition, daily lists of the attendance of every Member of their respective parties are kept by the Whips' offices.

(*c*) S.O. 122; Parl. Deb. (1845) 81, c. 1104, 1190.

(*d*) For interpretation of this order see Parl. Deb. (1903) 124, c. 1494.

(*e*) Parl. Deb. (1834) 24, c. 826.

(*f*) L. J. (1765-67) 206, 209, 213; *ibid.* (1767-70) 147, 187; *ibid.* (1779-83) 142; C. J. (1693-97) 667; *ibid.* (1699-1702) 230; *ibid.* (1711-14) 661; *ibid.* (1770-72) 285; *ibid.* (1778-80) 901.

(*g*) 13 Car. 2. stat. 1, c. 5; Seditious Meetings Act, 1817, s. 23.

strangers are supposed not to be admitted while the Houses are sitting.

### (1) IN THE LORDS

The Lords' S.O. No. VIII is as follows :

No person shall be in any part of the House during the sitting of the House, except Lords of Parliament and Peers of the United Kingdom, not being Members of the House of Commons, and heirs apparent of such Peers or of Peeresses of the United Kingdom in their own right, and such other persons as attend this House as assistants (*h*).

Peeresses, members of the Diplomatic Corps, representatives of the Press, government officials and strangers who are introduced by peers are regularly admitted below the bar and in the galleries, but the Standing Order may be at any time enforced.

On 25th April, 1916, the Lords resolved that the sitting of that day should be secret and strangers were not admitted. A similar procedure was adopted on 20th June, 1940, and on frequent subsequent occasions during the two great wars (*i*).

### (2) IN THE COMMONS

Until 1845, the Commons, by a sessional order, maintained the exclusion of strangers from every part of the House : but since that time that order has not been made, and the presence of strangers has been recognized in those parts of the House not appropriated to the use of Members (*j*).

The admission of strangers has formed the subject of inquiry of several select committees (*k*). Members are expected to take care not to introduce visitors who they have any reason to suppose will behave in a disorderly way (*l*).

The Chamber contains a press gallery, a ladies' gallery, a large public gallery (open to men and women) called the Members' Gallery, and galleries for peers, foreign and dominion representatives, and distinguished strangers. There are, besides, private galleries allotted to the Speaker (for ladies only) and the Serjeant at Arms.

The regulations for these galleries approved by the Speaker provide for the reservation of seats in these galleries until a certain hour by applications made to the Serjeant at Arms at the Admission Order Office.

In 1926 arrangements were made for the admission through the Foreign Office (news department), of representatives of the foreign, dominion and Indian press to the front row of the Members' Gallery, with the privilege of taking notes. In 1936 the accommodation for diplomatic representatives of

(*h*) As to the admission of peers' eldest sons to hear debates in the reign of Henry VIII, see State Papers, iii. 395.

(*i*) L. J. (1916) 90; H. L. Deb. (1916) 21, c. 811; L. J. (1939-40) 165. For war-time regulations relating to exclusion of strangers during secret sessions of either House, see below, p. 227. See also proceedings of the House of Lords with regard to a member of the privy council who had abused his privilege of admission to the steps of the throne during a debate, L. J. (1920) 405; H. L. Deb. (1920) 41, c. 1026, 1237.

(*j*) There is no rule to exclude soldiers in uniform if they are unarmed.

(*k*) H. C. 132 (1888); *ibid.* 126 (1893-94); *ibid.* 371 (1908); *ibid.* 116 (1923).

(*l*) Parl. Deb. (1895) 33, c. 917.



foreign countries was increased. For details of the galleries and of their several uses, see H. C. 109 (1943-44).

#### INTRUSION OF STRANGERS INTO THE CHAMBER

By S.Os. Nos. 87 and 88 the Serjeant is directed to take into custody strangers who are in any part of the House or gallery appropriated to Members, and strangers who misconduct themselves by a refusal to withdraw, or otherwise; and Members of the House are forbidden to bring a stranger, during the sitting of the House, into any part of the House or Gallery appropriated to Members.

The Serjeant has accordingly taken strangers into custody who have come irregularly into the House, or have misconducted themselves there (*m*). Officers of the House, and certain messengers on duty are not normally regarded as "strangers," but are, with few exceptions, excluded from secret sessions (see p. 253).

On 13 October 1908, and 18 May 1915, persons who came irregularly into the House were removed by the Serjeant and conducted beyond the precincts.

#### EXCLUSION OF STRANGERS FROM THE GALLERIES

According to ancient usage, the exclusion of strangers from the galleries could, at any time, be enforced without an order of the House; for, on a Member taking notice of their presence, the Speaker was obliged to order them to withdraw, without putting a question (*n*).

The inconvenience of the rule prompted the House to agree, in May 1875, to a resolution, which provided that, if notice was taken that strangers were present, the Speaker, or the chairman, should forthwith put the question that strangers be ordered to withdraw; reserving to the Speaker, or the chairman, the power, whenever he thought fit, to order the withdrawal of strangers from any part of the House (*o*).

Such an order extends to the Press Gallery (*p*), but does not extend to the ladies' gallery, which is not supposed to be within the House. When an order has been made for the withdrawal of strangers ladies can therefore only be informed of the subject of debate and left to withdraw or not at their own discretion (*q*). On 25 and 26 April 1916, during a secret session, the ladies' gallery was closed by order of the Speaker, and this practice has been followed in secret sessions.

The practice prescribed by the resolution of 31 May 1875, was followed by the Speaker in subsequent sessions (*r*), and the resolution was made a standing order in 1888 (now No. 89) (*s*). In session 1917-18 the Lords agreed to a resolution declaring that the privilege of being present at debates by long custom accorded by each House of Parliament to the Members of the other House should not be withdrawn on the occasion of

(*m*) C. J. (1761) 23; *ibid.* (1819) 537; *ibid.* (1830-31) 323; *ibid.* (1833) 246.

(*n*) Parl. Deb. (1810) 15, c. 309; *ibid.* (1845) 77, c. 138.

(*o*) Resolution of 31 May 1875, C. J. (1875) 243.

(*p*) H. C. Deb. (1925) 188, c. 2471, 2523; *ibid.* 189, c. 669.

(*q*) Parl. Deb. (1876) 230, c. 1553.

(*r*) C. J. (1876) 77, 79; Parl. Deb. (1876) 227, c. 1405, 1420; C. J. (1876) 348; Parl. Deb. (1876) 230, c. 1555; C. J. (1878) 186, 236; *ibid.* (1924-25) 432.

(*s*) C. J. (1888) 85.

a secret sitting, and requesting the House of Commons to make a similar order if it concurred in this proposal. The House of Commons agreed to the Lords' resolution and amended S.O. No. 89 by adding a proviso excepting Peers from its operation (*t*).

Various unsuccessful attempts have been made to secure the withdrawal of strangers under this standing order (*u*), but on certain occasions in the years 1916-18 when notice was taken of the presence of strangers, the question for their withdrawal was agreed to (*a*).

On these occasions, the House further resolved that the remainder of the day's sitting should be a "secret session." The purpose of this was to put into operation a regulation (No. 27A) made by an order in council of 22 April 1916, under the Defence of the Realm Consolidation Act, 1914, by which it was provided that if either House of Parliament in pursuance of a resolution passed by that House, held a secret session, it should not be lawful to publish any report of, or to purport to describe or to refer to, the proceedings at such a session, excepting any report officially communicated through the Official Press Bureau (*b*). A similar proceeding was made effective in the war of 1939 to 1945 by Regulation 3 (2) of the Defence (General) Regulations, made under the Emergency Powers (Defence) Act, 1939. (See also p. 815).

#### WITHDRAWAL OF STRANGERS DURING A DIVISION

During divisions of the House, strangers were entirely excluded until 1853, but from 1853 until 1906 were merely directed to withdraw from below the bar (p. 407). Since 1906 they have not been required to withdraw either from the seats below the bar or from those reserved for officials.

#### MISCONDUCT OF STRANGERS IN GALLERIES

Individual instances of misconduct on the part of strangers admitted to the galleries of the House (*c*) have occurred from time to time, and the offenders have been removed from the galleries, or the galleries have been closed by the Speaker's directions (*d*).

The Serjeant, with or without an express direction from the Speaker, has removed from the gallery of the House a stranger who was behaving in a disorderly manner (*e*) and when the disorder has continued, the gallery has been cleared by the Speaker's directions (*f*).

## 2. THE OFFICERS OF THE TWO HOUSES

The purpose of this section is to give an account of the functions and duties of the various officers and departments of both Houses, from the

(*t*) L. J. (1917-18) 278; C. J. (1917-18) 250, 302.

(*u*) C. J. (1890) 72; *ibid.* (1906) 414, 417; *ibid.* (1930-31) 107. For a successful effort, *ibid.* (1924-25) 432.

(*a*) C. J. (1916) 68; H. C. Deb. (1916) 81, c. 2463, 2486; C. J. (1917-18) 94, 95, 150, 278, 291.

(*b*) *London Gazette*, 1916, p. 4189.

(*c*) A select committee was appointed in December 1908 to inquire into the rules and regulations under which strangers were admitted to the House and its precincts, C. J. (1908) 477.

(*d*) Parl. Deb. (1906) 155, c. 1584; *ibid.* (1908) 195, c. 364, 368, 403; H. C. Deb. (1920) 135, c. 931; *ibid.* 142, c. 1692; *ibid.* (1921) 144, c. 1289; *ibid.*, 147, c. 9.

(*e*) Parl. Deb. (1898) 63, c. 221; H. C. Deb. (1919) 117, c. 1258.

(*f*) *Times*, 24 August 1893; 13 May 1905. See also 3 December, 1937.

Lord Chancellor in the House of Lords and the Speaker in the House of Commons downwards, in relation to the existing functions of their Houses. The process of development which, for example, has combined in the person of the Lord Chancellor judicial and administrative as well as legislative functions ; which has long since converted the Speaker's position from that of the King's representative in the House of Commons into that of an impartial presiding officer ; and whereby various other offices have been created or modified—all this process in its various aspects is a matter of history with which this chapter is not concerned. The account that follows is confined to the existing officers of the two Houses and their existing functions. The officers in each House fall into two groups (1) officers who are Members of the House in which they serve (2) permanent officials. The permanent officers, who are the more numerous, are grouped under a common heading for each House.

## A. THE OFFICERS OF THE LORDS

### THE LORD CHANCELLOR

The Lord Chancellor or the Lord Keeper of the Great Seal for the time being is Speaker of the House of Lords *ex officio*. It is his duty ordinarily to attend as Speaker and if he "be absent and there be none authorized under the great seal to supply that place in the House of Peers, the Lords may then choose their own Speaker during that vacancy" (g).

The duties of the Lord Chancellor as Speaker of the House are thus generally defined—"The Lord Chancellor, when he speaks to the House, is always to speak uncovered, and is not to adjourn the House, or do anything else as Mouth of the House, without the consent of the Lords first had, excepting the ordinary thing about Bills, which are of course, wherein the Lords may likewise overrule ; as for preferring one Bill before another, and such like ; and in case of difference among the Lords, it is to be put to the question ; and if the Lord Chancellor will speak to any thing particularly, he is to go to his own place as a Peer" (h).

The Lord Chancellor sits on the woolsack and presides over the deliberations of the House except when it is in committee. He puts the question on all motions which are submitted to the House.

Although the Lord Chancellor is Speaker of the House, the House, within the limits prescribed by its Standing Orders, is master of its own procedure and the Lord Chancellor has no authority beyond that of any other member in matters of order which are decided by the House itself.

Indeed he is not necessarily a peer and it has happened that the Lord Keeper of the Great Seal has officiated for years as Speaker without having been raised to the peerage (i), and in several cases the Lord Chancellor has acted as Speaker before his patent of creation as a Peer has been made out (j). In modern practice, however, the Lord Chancellor is invariably raised to the peerage.

(g) S.O. No. V.

(h) S.O. No. XX.

(i) Campbell, *Lives*, V. 188.

(j) L. J. (1886) 36 ; *ibid.* (1914-16) 163.

The woolsack is considered to be outside the limits of the House and the Lord Chancellor, or any other person not being a Peer who is appointed by the Crown to act as Speaker, may preside over the House and may put the question, but he may not vote or take any part in the debates of the House.

The Lord Chancellor is invariably an important member of the Government (*k*). His position is consequently different from that of the Speaker of the House of Commons, as he usually takes an active part in the deliberations of the House. When he speaks in debate, however, he does so as a Peer and moves away from the woolsack and stands a few feet to the left while addressing the House (*l*).

The Crown by commission under the great seal appoints several Peers to act as Deputy Speakers of the House of Lords in the absence of the Lord Chancellor. These take their place on the woolsack according to their precedence in the Commission. In the event of the absence of the Lord Chancellor and the Deputy Speakers the House elects a temporary Speaker (*m*).

#### THE CHAIRMAN OF COMMITTEES

A Peer is appointed to fill this office at the beginning of every session or whenever a vacancy occurs. He takes the chair in all committees of the whole House and he is also chairman *ex officio* of all other committees of the House on private bills and other matters unless the House otherwise directs (*n*). The Chairman of Committees is also the first of the Deputy Speakers appointed by commission and if he is present in the House when the Lord Chancellor is absent he always acts as Speaker.

If the Chairman of Committees is absent, some other Peer is appointed by the House to perform his duties, usually upon the motion of the Leader of the House (*o*).

The Chairman of Committees also exercises important duties in connection with private bills. In these duties he is assisted by his Counsel, who since the year 1808 has been a permanent salaried official of the House (*p*), and for whose appointment on a vacancy occurring he is responsible. The Chairman of Committees also appoints one of the two Examiners of standing orders.

#### ASSISTANTS OF THE LORDS

The judges of the Supreme Court of Judicature are the assistants of the House of Lords (*q*). Formerly the judges of the Courts of King's Bench and Common Pleas, barons of the Exchequer, the Master of the Rolls, the Attorney-General, Solicitor-General and the King's serjeants were

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(*k*) As to the judicial and political duties of the Lord Chancellor, see Halsbury's Laws of England, 2nd Ed. Vols. VI, p. 647, and VIII, pp. 539, 587, 630, 631.

(*l*) S.O. No. XX.

(*m*) S.O. No. V.

(*n*) S.O. No. XLI.

(*o*) S.O. No. XLII.

(*p*) L. J. (1808) 792.

(*q*) S.O. Nos. VI, VII.

summoned at the beginning of every Parliament to be present in Parliament "with us and with others of our council to treat and give advice" (r).

The writs now issued to all the judges of the Supreme Court and to the Attorney-General and Solicitor-General differ in form from those issued to peers and are termed writs of "attendance at Parliament" and not writs of "summons to Parliament." Peers are commanded "upon the faith and allegiance by which you are bound to Us" to be present "with the Prelates, Great Men and Peers to treat and give your counsel"; judges and the two law officers are to attend "with Us and with the rest of Our Council to treat and give your advice."

The attendance of the judges was formerly enforced on all occasions, but they now attend only at the state opening of Parliament unless they are summoned by a special order of the House when their advice is required (s). When the judges attend the House they sit on the wooolsacks (t), and when their advice on a point of law arising on an appeal by the House, sitting in its judicial capacity, is required a question of law is prepared by the Lord Chancellor and the lords of appeal, and is submitted to them from the woolsack (u). The judges may give their answer at once or the senior judge present may request that further time may be allowed to the judges for the consideration of the question. A motion to this effect is then made from the woolsack. As soon as the judges have prepared their answer they are again ordered to attend the House. If their opinion is unanimous, one judge attends and delivers the general opinion, but if the opinions differ all the judges attend and each delivers his own opinion.

#### PERMANENT OFFICERS OF THE LORDS

**The Clerk of the Parliaments.**—The Clerk of the Parliaments is the head of the permanent staff of the House. He is appointed by the Crown by letters patent. He must exercise his duties in person, and he can only be removed from office by the Sovereign upon an address of the House of Lords for that purpose (a).

He makes a declaration at the table of the House upon entering office "to make true entries and records of the things done and passed" in the Parliaments and to "keep secret all such matters as shall be treated therein and not to disclose the same before they shall be published but to such as it ought to be disclosed unto" (b).

The minutes of the proceedings of the House are prepared under his direction and issued in his name, and in the House he is responsible for calling on each item of the business of the day as it is reached and keeping watch generally over the course of business. He gives advice to Members of the House on points of order and procedure. He has the custody of

(r) Macqueen, 35.

(s) The last attendance was at the trial of Lord de Clifford on 12 December, 1935, L. J. (1935-36) 33.

(t) If the Scottish judges are called upon to deliver their opinions the House orders chairs to be placed for them below the bar, L. J. (1736-41) 99; *ibid.* (1806-8) 172, 189.

(u) Hailsham 2nd Ed. Vol. XXIV, p. 210, note (c).

(a) Clerk of Parliaments Act, 1824 (s. 5).

(b) L. J. (1933-34) 215.

all records and documents, including the important collection of manuscript records stored in the Victoria Tower. He endorses all bills sent to the Commons. In his custody also are placed all bills which have passed through both Houses and await the royal assent, with the exception of money bills, which are retained by the Speaker of the House of Commons, and he is responsible for their subsequent promulgation as acts. At the ceremony of the royal assent to bills by commission, he pronounces to each act the words by which the royal assent is signified, and it is his duty by statute to endorse on every act the date on which it received the royal assent.

He is Registrar of the Court when the House is sitting and is also accounting officer for the vote for the House of Lords.

The office of the Clerk of the Parliaments is divided into four Departments, namely, the Public Bill Office, the Private Bill and Committee Office, the Judicial Office and the Accountant's department. Clerks are appointed by the Clerk of the Parliaments who has power to remove them at pleasure (c).

*The Public Bill Office* is responsible for supervising the progress of public bills through the House, for the printing of bills and amendments, the promulgation in correct form of bills that have become acts and for the transmission to the House of Commons of all official messages.

Branches of this office are the Journal Office which is responsible for the compilation and issue of the Journals of the House together with their annual and decennial indices and also the Printed Paper Office which deals with the storage, issue to peers and circulation of all parliamentary papers and the requirements of peers as to the supply of debates, bills and amendments.

*The Private Bill and Committee Office* supervises the passage of private bills, and clerks from this office act as secretaries to all committees of the House.

*The Judicial Office* is concerned with the procedure arising out of the appellate jurisdiction of the House and the taxation of judicial costs.

*The Accountant's Department* is concerned with the framing of the annual estimates, the payment of salaries, collection of fees and keeping of all accounts.

**The Clerk Assistant and Reading Clerk.**—These two officers are appointed by the Lord Chancellor subject to the approbation of the House on their appointments being notified (d) and, when appointed, they cannot be suspended or removed from their offices without the order of the House (e). They sit at the Table of the House with the Clerk of the Parliaments and in general assist him in the performance of his duties.

The Clerk Assistant keeps the Minutes of the Proceedings of the House and prepares the Order Paper containing future business. The Minutes of Proceedings have been issued daily since 1824 and form the basis of the Lords Journals which are compiled from them subsequently.

The Reading Clerk records the daily attendances, reads aloud the

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(c) Clerk of Parliaments Act, 1824 (s. 5).

(d) Clerk of Parliaments Act, 1824.

(e) S.O. No. LV.

letters patent and writs of summons of newly created peers on the occasion of their introduction and administers the oath. He also reads the commissions for royal assent, prorogation, etc.

**The Gentleman Usher of the Black Rod.**—The office of Gentleman Usher of the Black Rod dates from the reign of Henry VIII. By the constitution of that Sovereign he was to be chief of all the Ushers of the Kingdom and have care and custody of all the doors of the "High Court called the Parliament." Since that time he has been appointed from time to time by letters patent conferring upon him all the "privileges, fees, etc., rights and liberties whatsoever now or heretofore belonging or appertaining to the Usher of the Black Rod as one of the Officers of the Garter." (*f*)

When Parliament is not sitting, the Palace of Westminster is in the custody of the Lord Great Chamberlain, who is an hereditary Great Officer of State receiving no salary, and in no way under the control of the House.

When Parliament is sitting, each House has the custody and service of the part assigned to it, and this control is exercised in the House of Lords, through the Gentleman Usher of the Black Rod. He or his deputy, the Yeoman Usher, is present whenever the House sits, and he controls the admission of strangers. He is sent to desire the attendance of the Commons in the House of Lords at the opening and proroguing of Parliament and when the royal assent is given to bills, and he assists at the introduction of Peers. If occasion were to arise he is the officer responsible for the commitment of parties guilty of breach of privilege or contempt.

**The Serjeant at Arms and the Deputy Serjeant at Arms.**—The Serjeant at Arms is appointed by the Crown by letters patent under the great seal. His deputy is appointed by the Lord Chancellor and this office is usually held by the Lord Chancellor's Private Secretary.

These officers attend the Lord Chancellor with the mace and execute the orders of the House for the attachment of delinquents when they are in the country. They are, however, the officers of the Lord Chancellor rather than of the House.

**Examiner of standing orders for private bills.**—This officer is appointed by the House on the nomination of the Chairman of Committees (*g*). It is his duty to examine all petitions for private bills and to certify whether the standing orders of the House have been complied with by the promoters. In these duties he acts in conjunction with a similarly styled officer appointed by the House of Commons (*h*).

#### SHORTHAND WRITER : LORDS AND COMMONS

The shorthand writer to the Houses of Parliament is appointed by the Clerk of the Parliaments and by the Clerk of the House of Commons, pursuant to a resolution agreed to by both Houses in 1813. The resolution passed by each House is :

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(*f*) See Report from Select Committee on Office of the Gentleman Usher of the Black Rod, H. L. 140 (1906).

(*g*) S.O. (Private Business) No. 2.

(*h*) In the House of Commons this official is called the Examiner of Petitions for Private Bills. As to the duties of the Examiners, see p. 845 *et seq.*

"That the Clerk of this House do appoint a shorthand writer, who shall by himself or sufficient deputy attend when called upon to take minutes of evidence at the bar of this House or in Committees of the same." (L. J. (1812-13) 449, 482; C. J. (1812-13) 497; see also H. C. 648, q. 973 (1833); Parl. Deb. (1897) 48, c. 923, and H. C. 398 (1914-16).

## B. THE OFFICERS OF THE COMMONS

### THE SPEAKER OF THE HOUSE OF COMMONS

The Speaker of the House of Commons is the representative of the House itself in its powers, proceedings and dignity. His functions fall into two main categories. On the one hand he is the mouth or representative of the House in its relations with the Crown, the House of Lords and other authorities and persons outside Parliament. On the other hand he presides over the debates of the House of Commons and enforces the observance of all rules for preserving order in its proceedings.

#### (I) THE SPEAKER AS REPRESENTATIVE OF THE HOUSE OF COMMONS

**In relation to the King.**—As stated elsewhere the Speaker is elected by the House itself, but his election is subject to the approbation of the King (see p. 269). On submitting himself for approval he petitions the King for the continuance of the Commons' privileges. He leads the Commons when summoned to attend the King in the House of Lords. At the opening of Parliament he reads the King's speech in the Commons. On ceremonial occasions he presents addresses of the Commons to the King (*i*). He reads written messages from the King and presents bills of aids and supplies for the Royal Assent. By order of the House during a session, and under statute during a recess, he issues writs to the Clerk of the Crown for the election of new Members.

**In relation to the Lords.**—The chief function of the Speaker in relation to the House of Lords is to consider Lords amendments to Commons bills with a view to seeing if they infringe the financial privileges of the Commons, and in such a case to draw the attention of the House thereto, and if necessary, to see that a special entry thereof is made in the Journal. He also certifies bills under ss. 1 and 2 of the Parliament Act 1911 (p. 777).

**In relation to outside authorities.**—The Speaker communicates the resolutions of the House to those to whom they are directed, conveys its thanks and expresses its censure, its reprimands, and its admonitions. He issues warrants to execute the orders of the House for the commitment of offenders, for the attendances of witnesses in custody, and for giving effect to other orders requiring the sanction of a legal form. Whenever it seems to him a suitable occasion (*j*), he communicates to the House letters and documents addressed to him as Speaker, such as expressions of congratulation and condolence and other messages from foreign countries

(i) For example, on the occasion of King George V.'s jubilee, 9 May 1935, C. J. (1934-35) 191.

(j) Parl. Deb. (1888) 329, c. 495.



and legislatures (*k*), letters acknowledging a vote of the thanks of the House (*l*), or relating to the rights and privileges of the House or of its Members, such as communications announcing the arrest or imprisonment of a Member (see Chapter V).

When the Speaker has communicated a document to the House, it is entered on the Votes and Proceedings of the House and on the Journal, without motion made, or question put (*m*); though a motion alleging a breach of privilege has been raised on the form of the document (C. J. (1888) 222).

**The rank of the Speaker.**—The Speaker's rank is defined by the Order in Council of 30 May 1919, in which it is provided that upon all occasions and in all meetings, except where otherwise provided by Act of Parliament, the Speaker shall have, hold and enjoy place, pre-eminence and precedence immediately after the Lord President of the Council (*n*). Until this time the Speaker had taken precedence of all commoners, both by ancient custom and by legislative declaration (*o*).

## (2) THE SPEAKER AS PRESIDING OFFICER OF THE HOUSE OF COMMONS.

The chief characteristics attaching to the office of Speaker in the House of Commons are authority and impartiality. The symbol of his authority is the mace of the House of Commons which is borne before him by the Serjeant at Arms when entering and leaving the chamber and upon state occasions, and is placed upon the table when he is in the chair (*p*). In debate all speeches are addressed to him and he calls upon Members to speak—a choice which is now never disputed. When he rises to preserve order or to give a ruling on a doubtful point he must always be heard in silence and no Member may stand when the Speaker is on his feet. Reflections upon the character or actions of the Speaker may be punished as breaches of privilege (see p. 124). His action cannot be criticized incidentally in debate or upon any form of proceeding except a substantive motion (see pp. 374-5). His authority in the chair is fortified by many special powers which are referred to below. Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized. He takes no part in debate either in the House or in committee. He votes only when the voices are equal, and then only in accordance with rules which preclude an expression of opinion upon the merits of a question. At a general

(*k*) C. J. (1888) 142; *ibid.* (1901) 5, 6, 7, 16, 48; *ibid.* (1912-13) 113, 115, 138, 543, 548; *ibid.* (1936) 50, 51, 55; see also C. J. (1914) 442.

(*l*) C. J. (1844) 3.

(*m*) Parl. Deb. (1881) 263, c. 45-49; *ibid.* (1882) 274, c. 1328. A motion, once made, that a letter communicated by the Speaker be laid upon the table (C. J. (1883) 4), cannot be reckoned as a precedent.

(*n*) *London Gazette*, 3 June 1919, p. 7059.

(*o*) The Act 1 Will. and Mary, c. 21, enacts that the lords commissioners for the great seal "not being peers, shall have and take place next after the peers of this realm, and the Speaker of the House of Commons." See also 2 Hatsell, 249, n.; and regarding the precedence between the Speaker and a peer of Ireland, whilst a member of the House of Commons, see Colchester, i. 413.

(*p*) When the House is not sitting the mace remains in the control of the Speaker.

election his seat is rarely contested, and when he vacates his office he is usually created a peer and in any case always relinquishes his membership of the House.

**Duties of the Speaker under usage.**—It is the duty of the Speaker to see that the House is properly constituted before it proceeds to business (see p. 311). He preserves the orderly conduct of debate by repressing disorder when it arises, by refusing to propose the question upon motions and amendments which are irregular, and by calling the attention of the House to bills which are out of order (and securing their withdrawal). He rules on points of order submitted to him by Members on questions either as they arise or in anticipation, but any notice of a question seeking a ruling must be notified to him privately and not placed upon the paper. The opinion of the Speaker cannot be sought in the House about any matter arising or likely to arise in a committee. The Speaker is always ready to advise Members of all parties who consult him privately whether upon any action which they propose to take in the House or upon any questions of order which are likely to arise in its proceedings. Such private rulings of the Speaker generally settle the questions at issue, but they may, if necessary, be supplemented by rulings given from the chair.

The Speaker's rulings, whether given in public or in private, constitute precedents by which subsequent Speakers, Members, and officers are guided. Such precedents are collected and in course of time may be formulated as principles, or "ancient usage" (see p. 438). It is largely by this method that the modern practice of the House of Commons has been developed.

A few examples may be given of motions and bills which for some irregularity the Speaker has not allowed to proceed.

**Motions.**—A motion which would create a charge upon the people and is not recommended by the Crown (p. 660); a motion touching the rights of the Crown, which has not received the royal consent (p. 727); a motion which anticipates a matter which stands for the future consideration of the House (p. 378), or which raises afresh a matter already decided during the current session (p. 375)—these are examples of motions upon which the Speaker refuses to propose a question.

**Bills.**—The Speaker has ruled a private bill out of order on the ground that it should have been introduced as a public bill (p. 837), and has directed the withdrawal of a public bill which should have been introduced on the report of a resolution of a committee of the whole House (p. 660), or which has gone beyond its title (p. 489). Similarly he has directed the recommittal of a bill to a standing committee when clauses affecting public money have been introduced without the necessary authority (p. 621).

**Discretionary Powers of the Speaker.**—By recent standing orders a number of discretionary powers have been vested in the Speaker. Under S.O. No. 8 he has to decide whether a proposal to move the adjournment of the House in order to discuss a definite matter of urgent public importance conforms to the provisions of the standing order. When a Member moves to introduce a bill under S.O. No. 10, he decides whether to put the question upon the second reading or for the adjournment of the

debate. Under usage when a complaint of breach of privilege is raised he has to decide whether a *prima facie* case has been made out which would justify such proceedings taking precedence over the other business of the House.

**Powers to restrict debate.**—Various powers have been given to the Speaker to prevent obstruction in the proceedings of the House (see p. 447). He has the power to select the amendments which may be proposed on consideration of a motion or bill, and to accept and put a motion for the closure of a question when it has been adequately debated. He checks irrelevance or repetition by ordering a Member to discontinue his speech, and has the power to refuse a motion for the adjournment of the House or of the debate. He prevents a division which in his opinion is unnecessarily claimed.

**Powers to prevent disorder.**—Effective power is given to the Speaker to prevent disorder in the House (see p. 437).

The Speaker represses disorder in the House by calling Members to order (p. 441), when the offence is committed in his presence; by putting in force S.O. No. 17 (1) (the suspension of Members) (p. 444); by naming a Member, under the ancient usage of the House incorporated in S.O. No. 19 (1); and by directing him to withdraw from the precincts, under S.O. No. 19 (2) (p. 441). The Speaker's powers in the event of grave disorder arising in the House are described on p. 442.

**Administrative duties.**—In addition the Speaker controls much of the machinery of the House. He has a department and officials of his own. He appoints the printers of the Journals, he is responsible through the Clerk of the House, for the accuracy of the minutes of proceedings, and, through an editor whom he appoints, for the Official Report of Debates.

**Duties under statute.**—Various duties are laid upon the Speaker by statute, for instance by the Lunacy (Vacating of Seats) Act, 1886 (p. 194), by the Parliament Act, 1911 (p. 777), by the Church of England Assembly (Powers) Act, 1919 (p. 567), by s. 10 of the Ministers of the Crown Act, 1937 and by s. 2 of the Regency Act, 1937. It may also be his duty to transmit to the officials of the Bank of England a certificate in writing, notifying the agreement of the House to a resolution for the redemption of stock forming part of the National Debt (q).

**Duration of office after dissolution.**—By the House of Commons (Speaker) Act, 1832, and by the House of Commons Offices Act, 1846, it is provided that, in case of a dissolution, the then Speaker shall be deemed to be the Speaker, for the purposes of those Acts, until a Speaker shall be chosen by the new Parliament.

#### DEPUTY SPEAKER IN THE COMMONS (S.O. NO. 80)

In 1855, on the report of a select committee, a standing order was agreed to, which enables the Chairman of Ways and Means (see below), as

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(q) C. J. (1888) 345; Parl. Deb. (1888) 328, c. 525, National Debt Act, 1870, first schedule.

Deputy Speaker, to take the chair during the unavoidable absence of the Speaker, and perform his duties.

The sanction of the consent of the Crown was given to the appointment of this committee and to the standing order, and to its amendment (r).

The provision of this standing order received statutory authority by the Deputy Speaker Act, 1855. The standing order has since been amended by a provision for the appointment of a Deputy Chairman (s), who, whenever the Chairman of Ways and Means is absent from the chair, is entitled to exercise all his powers, including those as Deputy Speaker.

On a number of occasions when the Speaker has asked the indulgence of the House to absent himself in order to attend some function or to receive an honour, the Chairman of Ways and Means has taken the chair as deputy Speaker in his absence (t).

When the Speaker is absent, the Serjeant, accompanied by the Chaplain, enters the House with the mace, which he places upon the table. The Clerk informs the House of the Speaker's unavoidable absence, and if necessary of that of the Chairman of Ways and Means (u). The Chairman of Ways and Means, or in his absence the Deputy Chairman, then proceeds to the table, and, after prayers, counts the House if necessary, and takes the chair. If the House goes into committee and he takes the chair thereof, when the question for reporting progress has been agreed to, he returns to the chair of the House, and a Member makes to him the report of the committee (a).

Unless the absence of the Speaker is thus formally announced the Deputy Speaker is, in view of the terms of S.O. No. 26 (5) not authorized to put the question on a motion for the closure of a debate; nor may he, under S.O. No. 28, exercise the power of selecting amendments, nor may he perform any duties of the Speaker, such as those in connection with the issue of writs, which do not arise from the course of debate. After the unavoidable absence of the Speaker has been announced and the chair has been occupied for some time by the Deputy Speaker, the Speaker is not precluded from resuming the chair, if he wishes (b).

The unavoidable absence of the Speaker from the remainder of the day's sitting may be announced by the Clerk at the Table at any time during a sitting (c); but an opportunity is usually taken which interferes as little as possible with the progress of debate.

S.O. No. 80 (3) (formerly No. 1) empowers the Speaker, after he has taken the chair at the commencement of a sitting, without any formal communication to the House, to request the Chairman of Ways and Means or the Deputy Chairman to take the chair, either temporarily or until the adjournment of the House (d); but before his Deputy can exercise the Speaker's powers under S.O. Nos. 26 and 28 the announcement of the Speaker's absence must be made (S.O. No. 80 (1) (e)).

(r) C. J. (1852-53) 758, 766; *ibid.* (1854-55) 395; *ibid.* (1902) 65; H. C. 478 (1852-53).

(s) C. J. (1902) 59; *ibid.* (1909) 337. S.O. No. 80 (2).

(t) C. J. (1870) 265; *ibid.* (1887) 306; *ibid.* (1893-4) 414; Parl. Deb. (1893) 14, c. 950; C. J. (1933-34) 240.

(u) C. J. (1903) 96.

(a) C. J. (1903) 96, 107.

(b) C. J. (1881) 50; Parl. Deb. (1881) 257, c. 1707; see also C. J. (1923) 90, 92; H. C. Deb. (1923) 162, c. 1417, 1632. See also C. J. (1866) 234, 237, 261, 263, 331, 334.

(c) C. J. (1903) 96.

(d) C. J. (1889) 393, 394; *ibid.* (1890) 539, 580.

(e) C. J. (1910) 231.

When the Speaker has found that he would be unable to be present at the meeting of the House, he has requested the Chairman of Ways and Means to take the chair as Deputy Speaker, under S.O. No. 80 (3), and has taken the chair himself in the course of the sitting (*f*).

#### THE CHAIRMAN OF WAYS AND MEANS

In committee the chair (at the table) is generally taken by the Chairman of Ways and Means or in his absence by the Deputy Chairman.

The Chairman of Ways and Means was formerly appointed at the beginning of a new Parliament, when the House resolved itself for the first time into the Committee of Supply, by the leader of the House, or a Minister of the Crown in his behalf, calling upon a Member to take the chair of the committee (*g*). In 1910 the Chairman of Ways and Means was appointed on a motion made by the Prime Minister as soon as the usual sessional orders had been made on the day on which the King's speech for opening Parliament was delivered (*h*). This course, which has usually been followed at the beginning of subsequent parliaments (*i*), has also been adopted when a vacancy has occurred in the course of a session (*j*). If the appointment is sought to be made in committee and a difference should arise therein concerning the election of a Chairman, the matter must be determined by the House itself. The Speaker at once resumes the chair; and a motion being made, "That A. B. do take the chair of the committee," the Speaker puts the question, which being agreed to, the mace is again removed from the table, and the House resolves itself into committee (*k*).

The Chairman so appointed continues in office for the remainder of the Parliament.

As has already been stated he also acts as Deputy Speaker and he executes various duties in connection with private bills (see p. 858 *et seq.*).

The Chairman of Ways and Means has final authority over all points of order arising when he is in the chair and there is no appeal from his ruling to the Speaker. He has power in committee to accept a motion for the closure and to select amendments. He has only a casting vote in committee.

**Impartiality.**—The Chairman of Ways and Means during his occupation of that office follows the same tradition of abstention from party controversy as the Speaker.

He no longer exercises the rights of the ordinary Member to participate in debates and divisions of the House. His independence has not the same formal guarantees as that of the Speaker, as he is appointed on the motion of a Minister of the Crown from the supporters of the Government, and is unlikely to be re-elected on a change of government. His seat is liable to be contested and his salary is placed upon the Estimates.

(*f*) C. J. (1909) 407, 474; *ibid.* (1931-32) 150.

(*g*) C. J. (1900) 417; *ibid.* (1906) 36.

(*h*) C. J. (1910) 6.

(*i*) C. J. (1911) 7; *ibid.* (1919) 16; *ibid.* (1922) 345; *ibid.* (1929-30) 17. In session 1924 the motion was withdrawn, and the Chairman of Ways and Means was appointed by a motion made on a subsequent day, C. J. (1924) 17, 35; H. C. Deb. (1924) 169, c. 49.

(*j*) C. J. (1905) 436; *ibid.* (1911) 436; see also *ibid.* (1942-43) 31 &c.

(*k*) C. J. (1921) 117; H. C. Deb. (1921) 141, c. 429.

**Resignation of the Chairman of Ways and Means.**—If the Chairman of Ways and Means resigns the chair during the sitting of Parliament, he either personally announces his retirement to the House, or addresses a letter to the Speaker making the announcement. In the former case observations are made by the ministerial and opposition leaders (*l*).

#### DEPUTY CHAIRMAN

In addition to the Chairman of Ways and Means, the House has power under S.O. No. 80 (2) to appoint a Deputy Chairman who, whenever the Chairman of Ways and Means is absent from the chair, is entitled to exercise all the powers vested in the Chairman of Ways and Means, including his powers as deputy Speaker. In the appointment of the Deputy Chairman the procedure adopted in the case of the Chairman of Ways and Means is followed (*m*).

The office of Deputy Chairman was first created in 1902 and its occupant follows the same tradition of abstention from party controversy as the Chairman of Ways and Means, and the same procedure is followed on his resignation as on that of the Chairman.

#### Temporary appointment of a Member to act as Deputy Chairman.

—On 11 December 1928 the House resolved, the King's Consent having been signified to the motion, that during the absence of the Deputy Chairman up to and including the 1 February, 1929, the Member for Oxford should be entitled to exercise all the powers vested in the Deputy Chairman including his powers as Deputy Speaker (C. J. (1928-29) 57).

#### TEMPORARY CHAIRMEN

Under S.O. No. 80 (4) it is the Speaker's duty to nominate at the commencement of every session a panel of not less than ten Members to act as temporary chairmen of committees when so requested by the Chairman of Ways and Means.

From this same panel Mr. Speaker appoints the chairmen of standing committees, see p. 615.

#### PRINCIPAL PERMANENT OFFICERS OF THE COMMONS

**Clerk of the House.**—The chief officers of the House of Commons are the Clerk of the House, the Serjeant at Arms, the Clerk Assistant, and the second Clerk Assistant. The Clerk of the House is appointed by the Crown, for life, by letters patent, in which he is styled "Under Clerk of the Parliaments, to attend upon the Commons" (*n*). He makes a

(*l*) Colonel Wilson Patten, 5 April 1853, *Parl. Deb.* (1853) 125, c. 591; Mr. Dodson, 8 April 1872, *ibid.* (1872) 210, c. 892; Mr. Lyon Playfair, 1 March 1883, *ibid.* (1883) 276, c. 1247; Sir Dennis Herbert, H. C. Deb. (1942-43) 386, c. 49. In session 1911 Mr. Emmott announced his resignation by a letter addressed to the Speaker, C. J. (1911) 436; so also did Sir Robert Young and Mr. Dunnico (deputy Chairman), C. J. (1930-31) 406, 407, and Major Milner, 30 May, 1945.

(*m*) On going into Committee of Supply, C. J. (1902) 65; *ibid.* (1906) 39; other committees, *ibid.* (1905) 261; *ibid.* (1910) 24; on motion in the House, *ibid.* (1911) 7, 442; *ibid.* (1919) 16; *ibid.* (1922) 345; *ibid.* (1924) 55.

(*n*) 2 Hatsell 255; *London Gazette*, 1 October 1850, 4 May 1886, 18 February 1902, 5 April 1921, 3 August 1937, etc., see also C. J. (1642-44) 54, 57. For earliest grant of appointment by letters patent, 1 Edw. 4, see H. C. 96 (1856). First appointment of the Clerk Assistant, C. J. (1640-42) 12; of the second Clerk Assistant, *ibid.* (1802-3) 7.

declaration, under the Promissory Oaths Act, 1868, before the Lord Chancellor, on entering upon his office, "to make true entries, remembrances, and journals of the things done and passed in the House of Commons." He signs the addresses, votes of thanks, and orders of the House, endorses the bills sent or returned to the Lords, and reads whatever is required to be read in the House. He is addressed by Members, and puts such questions as are necessary, on an election of a Speaker (p. 267), and for the adjournment of the House, when it is necessitated by the death or retirement of the Speaker (p. 269), or by the absence of the Speaker and the Members competent to act as Deputy Speaker. The Clerk has the custody of all records or other documents (o), and is responsible for the conduct of the business of the House in the official departments under his control. He assists the Speaker and advises Members, in regard to questions of order and the proceedings of the House. He is, also, the Accounting Officer for the House of Commons.

**Clerks Assistant.**—The Clerks Assistant are appointed by the Crown, under the sign manual, on the recommendation of the Speaker, and are removable only upon an address of the House of Commons (p). They sit at the table of the House, on the left hand of the Clerk. Their duties in the House are to keep the minutes of the proceedings, to receive, and when necessary, to put in order, notices of motions, questions and amendments, and to prepare the Notice Paper and Order Book for future sittings (pp. 248, 250).

**Serjeant at Arms.**—The appointment of the Serjeant at Arms is in the gift of the King, under a warrant from the Lord Chamberlain, and by patent under the great seal, "to attend upon His Majesty's person when there is no Parliament; and at the time of every Parliament, to attend upon the Speaker of the House of Commons:" but after his appointment he is the servant of the House and may be removed for misconduct. On 2 June 1675, the House committed Sir James Norfolk to the Tower, for "betraying his trust," and addressed the Crown to appoint another Serjeant at Arms "in his stead" (q). His duties are to attend the Speaker, with the mace, on entering and leaving the House, or going to the House of Lords, or attending His Majesty with addresses. It is his duty to keep the gangway at and below the bar clear, and to desire the Members to take their places, and not to stand with their backs to the chair, nor to stand, nor remove from their places, with their hats on, when the House is sitting (r). He takes strangers into custody who are irregularly admitted into the House, or who misconduct themselves there; causes the removal of persons directed to withdraw; gives orders to the door-keepers and other officers under him in connection with divisions; introduces, with the mace, Peers or judges attending within the bar, and messengers from the Lords; attends the sheriffs of London at the bar, on presenting petitions; brings to the bar prisoners to be reprimanded

(o) C. J. (1547-1628) 306; *ibid.* (1648-51) 542; *ibid.* (1711-14) 724, etc.

(p) House of Commons Offices Act, 1856, H. C. 132 (1856).

(q) Parl. Deb. (1875) 222, c. 998; Officers and Usages of the House, MS., 1805; C. J. (1675) 351.

(r) MS. account of the office and duty of the Serjeant at Arms attending the House of Commons.

by the Speaker, or persons in custody to be examined as witnesses. For the better execution of these duties, he has a chair close to the bar of the House. Out of the House, he is entrusted with the execution of all warrants for the commitment of persons ordered into custody by the House, and for removing them to the Tower or a prison, or retaining them in his own custody. He serves, by his chief office clerk as warrant officer of the House, all orders of the House, upon those whom they concern. He also maintains order in the lobby and passages of the House (s), and the police on duty in the House are under his direction. He regulates, under the Speaker, the admission of persons to the press gallery and lobby and has control of the arrangements for the admission of strangers.

It is another of the Serjeant's duties to give notice to all committees, when the House is going to prayers (under S.O. No. 62), when the Orders of the Day are reached, and when the House is counted or proceeds to a division. He has the appointment and supervision of the several officers in his department; and as housekeeper of the House (t) has charge of all its committee rooms and other buildings during the sitting of Parliament.

**Speaker's Counsel.**—The Counsel to Mr. Speaker is appointed by the Speaker. Though at times consulted on questions arising in the course of public business, his main functions are concerned with private business. He assists the Chairman of Ways and Means in the exercise and performance of the powers and duties of the latter in relation to private bills under standing orders relative to private business (u), and in relation to Scottish provisional orders under the Private Legislation Procedure (Scotland) Act, 1936 (a). The Speaker's Counsel is a member of the Court of Referees by which questions of *locus standi* of petitioners against private bills are determined (b); he also acts as assessor to the Select Committee on Standing Orders (c), to the Committee on Unopposed Private Bills (d), and to any committee on any opposed private bill when considering local legislation clauses contained in the bill (e). He also assists the Select Committee on Statutory Rules and Orders (f).

This officer was originally appointed to assist the Speaker generally in any legal questions coming before him and to discharge certain other duties in accordance with the report of the Select Committee of 1838. But it was not until 1851, as a result of another select committee of that year, that he was regularly associated with the Chairman of Ways and Means to assist in the examination of private bills (g).

**Comptroller and Auditor-General.**—The Comptroller of the receipt and issue of His Majesty's Exchequer and Auditor-General of

(s) Parl. Deb. (1807) 9, c. 1; *ibid.* (1904) 137, c. 982.

(t) See s. 5 of the House of Commons (Offices) Act, 1812.

(u) See p. 859 *et. seq.*

(a) See p. 987 *et. seq.*

(b) S.O. 89, see p. 874.

(c) S.O. 103, see p. 852.

(d) S.O. 132, see p. 911.

(e) Sessional Order, 1937.

(f) See *c.g.*, Votes and Proceedings, 5 December 1944.

(g) Clifford ii, 799.



Public Accounts is appointed by letters patent under the Exchequer and Audit Department Act, 1866, and is removable only on an address from the two Houses.

He assists the House of Commons by controlling the issue of money granted by Parliament from the Exchequer on the demand of the Treasury and by auditing the accounts of the departments. His reports regarding the applications and the appropriations of the grants form the basis of the work of the Public Accounts Committee (see p. 644).

#### OTHER OFFICERS OF THE HOUSE OF COMMONS

The other officers of the House are organized into three departments under the direct control, respectively, of the Clerk of the House, the Speaker, and the Serjeant at Arms.

**Department of the Clerk of the House.**—The department of the Clerk of the House comprises three separate offices, each in charge of a Principal Clerk. The Clerk of the House makes appointments to his department by nominating candidates who are then required to compete at the examination for administrative posts in the Civil Service.

The *Public Bill Office* is responsible *inter alia* for the printing of public bills after presentation and as amended, for communications with the House of Lords regarding bills after they are passed, and the performance of certain duties regarding the procedure by which the control of public money (*h*) is exercised by the House of Commons.

The principal duty of the *Journal Office* is the compilation of the daily Votes and Proceedings and the annual volumes of the Journals together with the sessional and decennial indexes thereto.

The *Committee and Private Bill Office* as its name implies has a dual function. It supplies the clerks for standing committees, select and sessional committees, and private bill committees, and is besides entrusted with the conduct of private bill legislation in all its stages. A clerk from this office is attached as secretary to the Chairman of Ways and Means.

The names of Members voting in divisions in the House are recorded by clerks from the three offices.

**Speaker's Department.**—In the department specifically called the "Speaker's Department" are his *Secretary*, who besides dealing with the Speaker's official correspondence assists him in his social and official relations with Members: his *Chaplain* (an office instituted in 1659) who reads prayers at the beginning of every sitting: the *Librarian* who, with the help of an Assistant Librarian and staff, directs the Commons' library (see p. 808), assists Members in their researches, and performs duties in connection with the preservation, arrangement, and indexing of Accounts and Papers (p. 253): an *Examiner of Petitions for Private Bills*: an officer in charge of the *Vote Office*, who with his assistant supervises the issue and circulation of parliamentary papers to Members: an accountant and two assistants in the *Fees Office* who are responsible for the collection of fees for private bills, the payment of Members and issue of railway vouchers;

(h) H. C. 149, Evidence qs. 65,787-9 (1937).

and a *trainbearer*, who attends the Speaker on entering and leaving the House and performs clerical and other duties. (See also p. 252)

**Department of the Serjeant at Arms.**—The Serjeant is assisted by a *Deputy Serjeant* who, in addition to deputizing for him in the Chamber, is responsible for the accounts and stores of the department, and an *Assistant Serjeant* who is the executive officer of the department and is in charge of the office work connected with it.

### 3. PARTY MACHINERY IN PARLIAMENT

Just as the seating of Members in the House of Commons is arranged on the basis of a single clear-cut division between Government and Opposition, so many other matters, and in particular the arrangement and conduct of business, have long been based upon this principle. The ideal condition for the working of this arrangement is the division of the House between two great parties, but the fact, which has been the case more often than not, that there are several separately organized parties, attached either to the Government or the Opposition, merely complicates the working of these arrangements and does not destroy their efficiency.

The predominant share of the Government in controlling and arranging the time and business of the House is now recognized by the standing orders. But the fact that the Government is supported by a party or combination of parties and opposed by another party or combination of parties, and that the machinery evolved by these parties performs important functions in the working of procedure, is ignored by the standing orders and has indeed been ignored in previous editions of this work. Since in a later chapter these functions will be described in some detail, it will not be out of place here to give a brief account of the organization of parties, so far as it exists within the House itself, prefacing that account by a statement of the changes which the recognition of the existence of parties has effected in the old-fashioned procedure of the House of Commons.

#### CHANGES IN PROCEDURE EFFECTED BY PARTY SYSTEM

The practice or ancient usage of the House of Commons was developed during a period when the relation between the Commons and the Government was that between a fairly homogeneous body with a developed corporate sense and an external and not always friendly authority.

The results of this condition, which continued to affect procedure long after the change to Cabinet government had been made, were :

(1) All Members were treated as on the same footing in respect of the business introduced by them, precedence between their orders and motions being dependent on the order in which they had been handed in or passed a particular stage, and business introduced by the Government being long refused any special priority.

(2) The principle on which time was arranged was a division of the week between motion days and order days, *i.e.* days on which new business and business which had made some progress, respectively, was taken.

(3) In order to prevent business being passed through so rapidly as to take possible opponents by surprise, Members had to rely upon their own powers

of attention. The number of stages and questions on bills and other business were accordingly multiplied to what now seems an inordinate extent.

When government came to be associated with a party organization inside the House opposed by another party, all this was changed. The control of the time of the House and the arrangement of business came to be dependent on the will of the Government and the old arrangement of notice days and order days practically disappeared. Similarly the multiplication of stages and questions on business became unnecessary, even in the interests of Members who opposed such business, and these were drastically reduced. For the party organizations undertook the duty of watching the progress of business, and informed Members in advance when the taking of a decision was to be expected.

#### CONSTITUTION OF PARTY MACHINERY

Inside the House each party has a fairly elaborate organization, presided over by officials who are Members of the House and staffed by subordinate officials who are not Members. The officers or Whips of the party in office consist of the Chief Whip who holds the official position of parliamentary or patronage secretary to the Treasury, three officers of the Household, and five lords of the Treasury with the addition of two or three Members who act as assistant Whips and who are unpaid.

The Whips of a party in opposition consist usually of the survivors of those who were Whips when it was in office together with as many other Members as may be selected for the purpose. The Government Whips and the Whips of the official opposition and of the second opposition party (when there is more than one party in opposition) have offices as near the Chamber as may be.

#### DUTIES OF WHIPS

The efficient and smooth running of the parliamentary machine depends largely upon the Whips. Certain duties are common to Whips of all parties, but by far the most important duties devolve upon the Government Chief Whip. He is concerned with mapping out the time of the session; for applying in detail the Government's programme of business; for estimating the time likely to be required for each item, and for arranging the business of the individual sitting. A statement is made in the House, usually on Thursday, of the business to be taken in the following week. In drawing up the programme he is limited to a certain extent by the standing orders, which allot a modicum of time to private Members, and by statute law or standing order, which require, or may require, certain business to be completed by specified dates, as well as by certain conventions which make it obligatory upon him to consult the Whips of Opposition Parties and even to put down items of their selection (see pp. 287-8). In carrying out his duties, he is directly responsible to the Prime Minister, as Leader of the House. It is also part of his duties to advise the Government on parliamentary business and procedure, and to maintain a close liaison with Ministers in regard to parliamentary business which affects their departments. He, together with the Chief

Whips of other parties, constitutes what is known as the "usual channels," through which communications pass as to business arrangements and other matters which concern the convenience of Members as a whole.

The duties which are common to Whips of all parties are the following. They keep their Members supplied with information about the business of the House, secure the attendance of Members, arrange for their Members who are unable to attend divisions to "pair" with Members of the opposite side of the House so that their votes may be neutralized and not lost, and supply lists of Members to serve on standing and select committees. They also act as intermediaries between the leaders and rank and file of their parties in order to keep the former informed as to the trend of party opinion.

#### 4. PARLIAMENTARY PAPERS AND PUBLICATIONS

##### A. PAPERS DEALING WITH DAILY BUSINESS OF THE TWO HOUSES

###### (1) HOUSE OF LORDS

**Minutes of Proceedings of the House of Lords.**—At the conclusion of each sitting of the House, a record of the proceedings of the sitting entitled "Minutes of Proceedings" is compiled, and printed copies bearing the signature of the Clerk of the Parliaments are circulated to all Members of the House who have expressed a wish to receive them. These are available by the following morning.

The Minutes of Proceedings comprise a record of all the proceedings of the House upon which a motion has been put from the woolsack or an order of the House has been made. They also include entries relating to judicial proceedings, introductions of Peers or the taking by Peers of the oath, messages received from the House of Commons, petitions presented, papers laid before the House by command of His Majesty or by statute, and proceedings upon bills and motions. Division Lists are appended to the Minutes.

Together with the Minutes of Proceedings is printed the Order Paper, consisting of a programme of future business so far as appointed, the business for the next following day being printed in heavy type, and also a list of all bills before the House showing the stage at which each has arrived and a list of select committees with the dates for which each is appointed.

Amendments to bills which Peers have handed in at the table for circulation are not included in or bound up with the Order Paper but are printed and circulated on separate sheets.

The "White Orders" are a copy of so much of the Order Paper as relates to the next following sitting and are printed off separately and made available at the House before each sitting.

At intervals of a fortnight or thereabouts there is circulated with the Minutes of Proceedings a list of papers laid before the House by statute in respect of which a period of time is prescribed by the statute under which they are laid for moving an address or resolution against them. This list gives particulars of the statutory requirement in each case.

The Minutes of Proceedings have been published daily since 1824 and are bound into a single volume at the end of each session.

**Journals of the House of Lords.**—The Journals of the House are compiled from the Minutes of Proceedings and issued under the nominal authority of a committee of the House appointed on the first day of each session. In the Journals the proceedings of the House are set forth in much greater detail than in the Minutes. The Journals of the House date from the year 1509 and are the official record of the business of the House. A Peer succeeding by descent may, if he thinks fit, lay on the table of the House the letters patent by which the peerage, in right of which he has been summoned, was granted in order that they may be entered on the Journals, and upon the introduction of any newly created Peer his letters patent and writ of summons are entered verbatim (*i*). The names of Peers attending each sitting are recorded in the Journals and also in pursuance of S.O. No. XXXVII the name of the Lord who moves the second reading of any bill.

Proceedings in Committee of the Whole House are set out in detail, every amendment moved being entered and the result of the motion recorded. The reports of select committees are also included *in extenso*. The proceedings of standing committees were bound up at the end of each volume from 1889 to 1909.

The House on occasions makes a special order for documents, which would not otherwise be set out in full in the Journals, to be entered. An order is commonly made for communications from foreign states, received by the Lord Chancellor through the Secretary of State for Foreign Affairs and communicated by him to the House, to be entered in the Journals (*j*). An order was made on 21 March 1890 for the Report of the Commissioners under the Special Commission Act, 1888, which had been presented to Parliament, to be entered upon the Journals (*k*).

Where entries in the Journals have been found to be incorrect, orders have been made for them to be expunged and amended (*l*). On 25 April 1904 the Lord Chancellor informed the House that Lord Hartismere (L. Henniker) in taking his seat on the preceding Thursday had delivered at the Table the writ addressed to his father. It was ordered that the entry in the Journals relating to his taking his seat and the entry of his name among the Lords present and also his signature on the Test Roll be vacated (*m*). Mistakes in the numbers in a Division List have been similarly corrected by an order to amend the Journals accordingly (*n*). A proposal to amend the Journals by striking out from a Division List the names of certain Lords who had voted through inadvertence without having taken the oath did not commend itself to the House as a proper way of dealing with such a situation and was withdrawn (*o*).

(*i*) S.O. Nos. XIII and No. XV.

(*j*) L. J. (1919) 247, 273, 355 (Termination of the War); L. J. (1901) 8 (Death of Queen Victoria). See also *ibid.* (1888) 285, 392; *ibid.* (1893) 478, 484; *ibid.* (1897) 257; *ibid.* (1910) 124, 130, etc.

(*k*) L. J. (1890) 90.

(*l*) L. J. (1843) 107. In cases where the Journals have already been printed and published, it appears to be the practice, if an order for emendation is made, for the official copy kept in the Victoria Tower to be corrected by hand.

(*m*) L. J. (1904) 110. See also entry relating to Lord Byron, L. J. (1917) 136.

(*n*) L. J. (1905) 104.

(*o*) Parl. Deb. (1906) 164, c. 4.

*Authentication of extracts from Journals.*—When the Journals are required as evidence, a party may have a copy or extract, authenticated by the signature of the Clerk of the Parliaments, and, if necessary, the Lords have allowed an officer of their House to attend a trial with the original Journal. By the Evidence Act, 1845, s. 3 (which does not extend to Scotland) it is enacted that all copies of the Journals of either House, purporting to be printed by the printers to either House of Parliament, are to be admitted as evidence by all courts, and others, without proof being given that such copies were so printed.

(2) HOUSE OF COMMONS

**Select Committee on Publications and Debates Reports.**—In sessions 1888, 1889, 1890, and 1894, Select Committees were appointed in the Commons, "to superintend the form, and to regulate the distribution of Parliamentary papers" (p).

Since 1907 a Select Committee on Publications (q) has been appointed sessionally to inquire into the expenditure on stationery and printing for this House, and from 1911 has had the additional charge of extending its inquiry to the stationery and printing of the public services generally. Since 1910 (r) the committee has also assisted the Speaker in the arrangements for the Official Report of Debates (see p. 252), and has been known as the Select Committee on Publications and Debates Reports. In 1944 the terms of reference were extended to the Notice Papers, the forms and distribution of which being matters with which the Select Committee is concerned (s).

**The Blue Paper.**—Certain Papers known as the "Blue Paper" or "Vote" and arranged by custom in the following order, are delivered by messenger at every Member's residence (t) in the morning of each day after that on which the House has sat. Of these the most important are:—

1. *Votes and Proceedings.*—This is a record of the proceedings of the House on the previous day published on the authority of a sessional order passed regularly on the first day of the session since 1680. The entries are compiled on the responsibility of the Clerk of the House by the Votes and Proceedings Office mainly from the entries in the minute books of the Clerks at the Table, and after "being first perused by Mr. Speaker," are printed and circulated. The Votes and Proceedings record all that is, or is deemed to be, *done* by the House, but they ignore everything that is *said* unless it is especially ordered to be entered (see p. 439). As shown below (p. 248) there are a number of formal orders on which no question is put to the House, but as such orders have the same force as those which the House is actually asked to decide, they are recorded in the same way. It is important to bear this in mind as otherwise the earlier part of the day's Votes will not be understood.

(p) C. J. (1888) 485; *ibid.* (1889) 20; *ibid.* (1890) 64; *ibid.* (1894) 52.

(q) C. J. (1907) 175.

(r) C. J. (1910) 79; *ibid.* (1930-31) 155.

(s) Votes and Proceedings, 13 December 1944.

(t) Provided it is within a three-mile radius from the House of Commons. For greater distances dispatch by post takes the place of delivery by hand.

A typical day's Vote records, first, the unopposed Private Business which is actually done in the House.

There follows (for no reference is made to Questions as they are not acts of the House) a list of the documents which have been presented to the House that day, such as Public Petitions, Papers, and Reports from Committees. Formerly these had to be received before the House entered upon the business of the day or else they had to wait until the Orders of the Day were disposed of at the end of the sitting, as the Orders could not be interrupted. Now that they are no longer presented by Members in person to the House they can be received at any time during the sitting, but they are recorded in the Votes as having been received before the House entered upon the business of the day.

Messages from the Lords which are generally not noticed in the House also appear in the Votes at this point and any other formal business such as the reviving of a "dropped" order, an order for considering Lords' Amendments, or the first reading of a Lords' bill. Then follow any orders made by the House "at the commencement of public business" (see p. 358).

As regards the business of the day, the record in the Votes is, broadly speaking, an account of what actually takes place in the House, but there are, however, a few points which may be noticed.

(1) If motions and the questions consequent thereon are agreed to without a division and without any other intermediate proceeding arising, only the resulting decision of the House is recorded.

(2) Amendments to bills in committee or on report which are made without a division or interruption are not set out, as the entry is merely "Amendment(s) (an, another, or other) made to the Bill." The bill itself shows the nature of the amendment.

(3) The fact that a debate has occurred is not noticed unless a motion is made for the adjournment of the debate, or the debate stands adjourned at the moment of interruption or a Member claims to move the closure of the debate.

2. *Private Business*.—This Paper deals solely with matters relating to private bills. The first part of it consists of the agenda or Order Paper of Private Business (stages of private bills and motions relating to them) for the current day. The second part contains notices with regard to Bills to be taken on future days, and memoranda of various kinds, given by the parliamentary agents acting on behalf of the promoters of, or petitioners against, private bills.

3. *Notice Paper of Public Business* (giving the agenda of the sitting for the current day).—The "Blue" Notice Paper is the official notice paper. An item which requires notice but is omitted from this paper, cannot be taken even if notice of it is subsequently inserted in the White Paper (see p. 250) (u). The items which this paper contains are arranged under the following headings :

(1) Unopposed Returns.

(2) Questions for Oral answer ("Starred" Questions).

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(u) H. C. Deb. (1929-30) 236, c. 653.

(3) A heading—"at the commencement of Public Business"—which comprises :

- (a) notices of public bills which it is intended to present to the House under S.O. No. 32 (2) ; and
- (b) notices of certain motions only to be moved at this time, such as motions moved by the Government relative to the business of the House, and motions for leave to bring in bills or nominate committees under S.O. No. 10.

(4) The "Orders of the Day" or "Notices of Motions"—the heading which comprises all the items on which debate takes place, namely, stages of public bills, the business of the Committees of Supply and Ways and Means, and certain motions. Government Orders are marked with a star.

(5) Notices of Motions relative to the Orders of the Day—such as amendments proposed to be moved on a stage of a bill or other motions which are contingent on an Order of the Day. An Order to which there are such contingent motions is distinguished by a small italic "a" before it, and the contingent motion is marked with the number in brackets of the Order to which it relates (see 4 (1) below).

(6) Questions not for Oral answer, or "Unstarred" Questions.

(7) Notices of sessional printed papers which have been received by the Vote Office the previous day.

(8) Notices of the various committees on public matters which are meeting that day—together with time and place of meeting.

(9) Notices given the previous day. By far the greater number of these, as a rule, are of Questions. But there are also notices of motions, of amendments to the second or third readings of public bills, and amendments to public bills (in Committee of the Whole House or on Report). When amendments are offered to a bill in considerable numbers, they are not printed here but as part of a different series called "Supplement to the Votes."

4. *Supplement to the Votes.*—This comprises :

(1) Amendments to Public Bills set down for consideration on the current day in Committee of the Whole House or upon Report, if such amendments occupy more than two or three pages ; also notices (in equal volume) given on the previous day of amendments to the above stages of Bills to be considered on a future day.

(2) The Amendment Paper of Public Bills under consideration on the current day in a standing committee, also notices given on the previous day of amendments to bills to be considered in standing committee on a future day.

5. *Minutes of Proceedings* on the previous day of a standing committee, i.e. the names of Members present, the fate of amendments moved, and the results of divisions with the names of the Members voting on each side.

6. *Division Lists* giving the names of Members voting in divisions in the House on the previous day.

The Blue Paper circulated on Saturday and on the first day of an adjournment differs from those circulated on the other days of the week in



arranging the notices given on the previous day under their respective days in a complete programme, so far as known, of future business, called the "Order Book" (see below).

**The White Paper.**—The White Paper contains certain portions of the Blue Paper reprinted so far as they relate to the current day's sitting—*i.e.* (of the items enumerated above) No. 2, Private Business; No. 3, "Notice Paper" (1) to (6); and No. 4, "Supplement to the Votes" (1).

The differences permitted between the White Paper and the Blue Paper are confined to formal alterations made by the authorities of the House and the correction of printers' errors (see p. 248). Accordingly, when the notice of the presentation of a bill as it appeared on the reprinted Paper differed materially from the notice that appeared in the Paper circulated in the morning, the Speaker ruled that the bill with the altered title could not be presented (*a*). In the case of prolonged adjournments even, new matters cannot be inserted; and when, for the convenience of Members, the Speaker allowed the appearance on the White Paper of some new clauses to be proposed by a Minister to a bill on consideration, as amended, he pointed out that, as notice of them was required, the new clauses could not be moved (*b*).

**The Order Book.**—The Order Book (*c*) is available each day before the meeting of the House. It serves as a programme, so far as notified, of the future business of the session, showing for each day any Questions, Motions, and Orders (with their contingent motions) set down for that day, whether by order of the House or by notice given, and concluding with a list of Notices of Motions for which no day has been fixed, ordinarily called "Motions for an early day."

**The Journal.**—The Commons' Journal forms the permanent official record of the proceedings of the House; it is published annually, and one volume usually contains the record of one session, though if there should be two sessions comprised within one year (as in 1922) the second session is included in the same volume.

The Journals of the Commons begin in 1547 (1 Edward 6); and, with the exception of a short period during the reign of Elizabeth, are complete to the present time.

The Journal is compiled from the Votes and Proceedings and the minute books of the Clerks at the Table by the Journal Office. It is not drawn up in the form of minutes, but is cast in a more explanatory narrative form which preserves continuity with that of the seventeenth century. Committee proceedings are set out, not in the language of the Journal, but in that of the Votes and Proceedings, possibly because until 1829 proceedings in committee were not noticed in the Journal.

*Statements from the Chair entered in the Journal.*—When the Speaker expresses on behalf of the House its censure, reprimand or admonition, his words are entered, either with or without the order of the House, in

(*a*) H. C. Deb. (1924) 173, c. 233.

(*b*) Parl. Deb. (1906) 163, c. 61; H. C. Deb. (1911) 31, c. 527; *ibid.* (1914-16) 74, c. 1643. See also Denison, 101.

(*c*) The daily printing of this notice paper, commonly called the "Order Book," was begun in 1856, and its weekly circulation to Members dates from February 1865, Parl. Deb. (1865) 177, c. 323.

the Votes and upon the Journal. Such entries have also been made on other occasions.

An address delivered from the chair, made on the request of the Prime Minister at the close of a personal explanation relating to the disorder which had arisen in committee on a previous day, was entered in the Journal, on the motion of the Prime Minister (*d*). An order of the House for an entry in the Journal was made in the case of the admonition of a Member (*e*).

Mr. Speaker's words addressed to the House with reference to the circumstances under which he had adjourned the House on the previous day owing to the prevalence of grave disorder, and his words acknowledging a resolution of the House thanking him for his services in presiding over the electoral reform conference uttered as soon as the resolution was agreed to were entered upon the Journal without an order of the House (*f*).

*Entries in the Journal, etc., expunged.*—Entries in the Journal and the Clerk's Minute Books have occasionally been ordered to be expunged (*g*).

When the resolution of 17 February 1769, affirming the incapacity of Wilkes, was ordered to be expunged on 3 May 1782, "The same was expunged by the Clerk, at the Table, accordingly" (*h*); and the entry was erased in the manuscript Journal of that day; but the printed Journal, though reprinted since that time, still contains the resolution.

On 16 May, 1833, a motion was made by Mr. Cobbett, impugning the conduct of Sir Robert Peel. Lord Althorp moved "That the resolution which has been moved be not entered in the minutes:" but the Speaker put the question thus, "That the proceedings be expunged," on the ground that the minutes had already been entered in the Clerk's book. The question thus put was carried by 295 to 4, and no entry of the motion or other proceedings was made in the Votes (*i*).

On 6 March 1855 a motion was made relative to the appointment of a recorder for Brighton; and on proceeding to a division the mover was left alone, the Member who had seconded his motion *pro forma*, declining to vote with him. A Member immediately rose and moved that the motion should not be entered in the votes. This was agreed to by all the Members except the mover of the original motion. Accordingly, there is no entry of either motion in the votes (*j*).

The House on 27 January 1891 resolved that the resolution of 22 June 1880 (*k*), which debarred Mr. Bradlaugh from taking the oath or affirmation, be expunged from the Journals; and accordingly the Clerk passed a red line through that resolution in the volumes preserved in the library and Journal Office of the House, and noted on the margin of the page that the paragraph was expunged pursuant to the resolution of the House (*l*). The Clerk also addressed letters to the librarians of the British Museum, the Universities of Oxford, Cambridge, and Dublin, and the Advocate's Library at Edinburgh, requesting them to note the proceeding on the copies of the Journal in their libraries.

On 16 July, 1909, the House ordered that the entry of a previous day to

(*d*) C. J. (1893-94) 477.

(*e*) C. J. (1929-30) 503.

(*f*) C. J. (1912-13) 409; *ibid.* (1917-18) 56; H. C. Deb. (1917) 92, c. 569.

(*g*) C. J. (1644-46) 397, etc.; *ibid.* (1646-48) 197; *ibid.* (1651-59) 317; *ibid.* (1693-7) 210; *ibid.* (1770-72) 509.

(*h*) C. J. (1780-82) 977.

(*i*) Peel's Speeches, ii, 704; Parl. Deb. (1833) 17, c. 1324.

(*j*) Parl. Deb. (1854-55) 137, c. 202.

(*k*) C. J. (1880) 233.

(*l*) C. J. (1890-91) 45.

the effect that the Chairman had called the attention of a Committee of the Whole House to the disorderly conduct of a Member, and had directed him to withdraw from the House for the remainder of the sitting, and that the Member in question withdrew accordingly, should be expunged. The entry ordered to be expunged was printed in the Journal in erased type (*m*).

*The Journal as evidence.*—A printed copy of the Journal is accepted as evidence in a court of law under s. 3 of the Evidence Act, 1845 (see p. 247). When a cause is tried in London, it is usual for an officer of the House to attend with a printed Journal, if leave is obtained (see p. 638); if the trial is elsewhere, a party may either obtain from the Journal office a copy of the entries required, without the signature of any officer, and swear himself that it is a true copy; or, with the permission of the House, or, during the recess, of the Speaker, he may secure the attendance of an officer to produce the printed Journal, or extracts which he certifies to be true copies.

### (3) THE OFFICIAL REPORTS OF DEBATES IN THE LORDS AND COMMONS

Debates in Parliament are published daily in the form of printed reports; galleries are reserved for the accommodation of reporters (*n*). Committees have been appointed to provide increased facilities for reporting and a place is reserved for a reporter near the table of the House of Lords. Grants were voted annually from 1878 till 1908 to further the publication of the debates, and from 1909 the debates have been reported and issued by an official staff (*o*).

Since 1909 the debates of the two Houses have been issued separately. In the Lords the debates come within the purview of the House of Lords' Offices Committee, while in the House of Commons one of the functions of the Select Committee on Publications and Debates' Reports appointed each session is "to assist Mr. Speaker in the arrangements for the reporting and publishing of Debates."

**The Lords' Official Report.**—The official reporting staff of the House of Lords was appointed in October 1917. It consists of an Editor, with an assistant, and six reporters.

The report of each sitting is printed the same night and published by His Majesty's Stationery Office in the morning. Since December 1928, written answers to what are called non-oral questions have been printed in the Official Report.

**The Commons' Official Report.**—The Commons' Official Report is prepared by a department controlled by Mr. Speaker, comprising an Editor, three Assistant Editors, and 18 reporters, with an office staff.

It is a full report, in the first person, of all speakers alike, a full report being defined as one "which, though not strictly verbatim, is substantially the verbatim report, with repetitions and redundancies omitted and with obvious mistakes corrected, but which on the other hand leaves out nothing

(*m*) C. J. (1909) 303, 311.

(*n*) Reporters' Gallery, House of Lords, since 15 October 1831; in the House of Commons, since 19 February 1835, 3 Walpole, Hist. 287.

(*o*) See Report of Select Committee on Parliamentary Debates, H. C. 239 (1907); debate on Supplementary Estimates, 14 May 1908, Parl. Deb. (1908) 188, c. 1356; and H. L. Deb. (1914-16) 19, c. 20.

that adds to the meaning of the speech or illustrates the argument." (This definition was adopted by the Select Committee on Parliamentary Debates, 1907 (H. C. 239 (1907)).)

During the session the Official Report is published daily by H. M. Stationery Office, each Member being entitled to two copies free of charge. The daily parts are later made up into bound volumes, which, until 1940, were issued free to any Member who desired to have them, but following the recommendations of the Select Committee on Publications and Debates Reports (H. C. 133 (1939-40)) were for a time charged for at cost price. In March, 1945, Mr. Speaker announced that the volumes would again be issued free (H. C. Deb. (1944-45) 409, c. 1153). Reprints of particular speeches, in leaflet form, may be obtained by Members on application to the Editor and on payment, to H.M. Stationery Office, of a fee based on the cost of production.

Verbal corrections are allowed to be made in the reports of speeches in the daily part for reproduction in the bound volume, but only if, in the opinion of the Editor, they do not alter in any way the general sense of the speech made (see H. C. Deb. (1914) 60, c. 1632 and (1942-43) 386, c. 217).

A Member has sometimes been allowed, as a matter of personal explanation, to point out at a subsequent sitting an error in the report of his speech in the Official Report of Debates, *e.g.* H. C. Deb. (1927) 208, c. 866.

No Official Report is made, or shorthand note taken, of speeches delivered in Secret Session, the Official Reporters being excluded as strangers (*p*).

When the Official Report was first issued in 1909 it was styled "Parliamentary Debates, Official Report." The name in general use from the early nineteenth century, "Hansard," was due to the fact that T. C. Hansard was first printer, and later publisher, of the unofficial series of Parliamentary Debates inaugurated by William Cobbett in 1803. In June, 1943, the Select Committee on Publications and Debates Reports recommended that the word "Hansard" should be printed on the cover of the Official Report (see H. C. Deb. (1942-43) 391, c. 2303), and this addition was made from November 1943.

## B. ACCOUNTS, PAPERS, AND RECORDS PRESENTED TO PARLIAMENT

### RETURNS BY ORDER AND ADDRESS

Parliament is invested with the power of ordering all documents to be laid before it, which are necessary for its information. Each House enjoys this authority separately, but not in all cases independently of the Crown. Accounts and papers relating to trade, finance, and general or local matters, are ordered directly, and are returned in obedience to the order of the House whence it was issued: but returns of matters, connected with the exercise of the royal prerogative, are obtained by means of addresses to the Crown.

The distinction between these two classes of returns should be borne in mind: as, on the one hand, it is irregular to order directly that which should be sought for by address; and, on the other, it is a compromise of the authority of Parliament to resort to the Crown for information which it can obtain by its own order. The application of the principle is not always clear:

(*p*) On occasion, however, the Speaker has issued a short "Report of the Proceedings in Secret Session," which has been included in the Official Report, and when divisions have occurred, this Report has included the Question put from the Chair and the names of the Members voting (see H. C. Deb. (1941-42) 379, c. 1218-20, and H. C. Deb. (1942-43) 388, c. 200-4). The Report is also printed in "Votes and Proceedings."

but, as a general rule, it may be stated that all public departments connected with the collection or management of the revenue, or which are under the control of the Treasury, or are constituted or regulated by statute, may be reached by a direct order from either House of Parliament: but that public officers and departments, subject to his Majesty's secretaries of state or the Privy Council, are to receive their orders from the Crown.

Thus, returns from the Commissioners of Customs and of Inland Revenue, the Post-Office, the Board of Trade and the Treasury, are obtained by order. These include every account that can be rendered of the revenue and expenditure of the country; of commerce and navigation; of salaries and pensions; of general statistics; and of facts connected with the administration of all the revenue departments. Addresses are presented for treaties with foreign powers, for despatches to and from the governors of colonies, and for returns connected with the army, the civil government, and the administration of justice. Where returns relate to the expenditure of public money upon any Crown property, they are obtained by order, and not by address (*q*).

A Minister may move for a return from his own department, without notice (see p. 372), and immediately present it, in compliance with the order which has just been made; see Debate on the Attorney-General's motion for copy of a record of a conviction and judgment (C. J. (1882) 75; Parl. Deb. (1882) 266, c. 1804).

To secure regularity in the form of these returns, it was recommended by the Select Committee on Printing in 1841 that every Member be advised, before he gives notice of a motion for a return, to consult the librarian (*r*).

**Failure to make returns.**—When an address for papers has been presented to the Crown the parties whose duty it is to make the return would appear to be under a direct obligation to comply. If the order for an address with the object of securing such a return has been ignored, the persons responsible have been ordered to make the return forthwith (*s*). In other cases, however, further addresses have been moved, praying the Crown to give directions that papers be laid before the House forthwith (*t*).

If parties neglect to make returns to orders of either House in reasonable time, they are ordered to make them forthwith (*u*); or so much of returns as has not been made (*a*). If they continue to withhold them, they are ordered to attend at the bar of the House (*b*); and unless they satisfactorily explain the causes of their neglect, and comply with the order of the House, they will be censured or punished according to the circumstances of the case (*c*). A person has been reprimanded by the Lords for having made a return to an order which he was not required or authorized to make, and for framing it in a form calculated to mislead the House (*d*). The addition of particulars to a return, not specified

(*q*) C. J. (1826) 261; *ibid.* (1850) 392; *ibid.* (1852) 99; *ibid.* (1854) 300, 447; *ibid.* (1856) 150; *ibid.* (1857) 160.

(*r*) H. C. 181 (1841); *ibid.* 122 (1857).

(*s*) C. J. (1835) 413, 649; *ibid.* (1840), 448. See also *ibid.* (1859) 571.

(*t*) C. J. (1840) 220; *ibid.* (1865) 70.

(*u*) C. J. (1859) 371; *ibid.* (1864) 291; *ibid.* (1866) 475.

(*a*) C. J. (1876) 354.

(*b*) C. J. (1841) 363.

(*c*) C. J. (1835) 575; L. J. (1849) 134.

(*d*) L. J. (1850) 89.

in the order of the House of Commons, has been ruled by Mr. Speaker to be an irregularity (*e*).

**Orders discharged.**—When it is discovered that an address has been ordered for papers which should properly have been presented to the House by order, the error is corrected by discharging the order for the address, and ordering that the papers be laid before the House (*f*). In the same manner, when a return has been ordered, for which an address ought to have been moved, the order is discharged, and an address is presented instead (*g*). Where the order for a return is found not to comprise all the particulars desired, it is usual to discharge the order, and make another in a corrected form.

Sometimes, however, without discharging the order, public papers or other particulars have been ordered to be added to the return (*h*), or the order for the return has been read and amended (*i*). Similarly a resolution for an address has been read, and another address ordered for additional information (*j*), or an address has been ordered asking that the information, previously addressed for, may be extended to include additional information (*k*). An order has been made that certain particulars specified in an order for a return shall be separately stated (*l*), while an order for a return (*m*), or so much of an order as related to certain portions of a return, has been discharged (*n*). A return which has been presented has also been ordered to be amended (*o*). Orders of a former session relating to papers are also amended.

The orders of a former session, that a return do lie upon the table and be printed, have been discharged; and papers (*p*) or parts of papers (*q*) that have been laid upon the table have been withdrawn.

**Returns relating to the other House.**—If one House desires any return relating to the business or proceedings of the other, neither courtesy nor custom allows such a return to be ordered; but an arrangement is generally made, by which the return is moved for in the other House; and, after it has been presented, a message is sent to request that it may be communicated (*r*). A message is sometimes sent requesting that a return of certain matters may be communicated; and such return is prepared and communicated accordingly (*s*). It is not usual to send a message for a return which has been obtained from other departments, by order or address. For such a return it is more regular to move in the usual manner (*t*).

(*e*) Parl. Deb. (1889) 338, c. 1717.

(*f*) C. J. (1837) 580.

(*g*) C. J. (1849) 232-623.

(*h*) C. J. (1855) 56, 230; *ibid.* (1910) 42.

(*i*) C. J. (1888) 489.

(*j*) C. J. (1854) 288.

(*k*) C. J. (1890-91) 169.

(*l*) C. J. (1872) 277.

(*m*) C. J. (1893-94) 589.

(*n*) C. J. (1871) 89.

(*o*) C. J. (1867) 322; *ibid.* (1867-68) 178 (by address).

(*p*) C. J. (1873) 10; *ibid.* (1878-79) 18; *ibid.* (1880) 232; *ibid.* (1905) 21.

(*q*) C. J. (1920) 58.

(*r*) C. J. (1856) 229, 250, 270, 281. In 1856, a notice had been given of a return of fees on private bills in both Houses, but on an intimation from the Speaker, the return was confined to the House of Commons, *ibid.* (1856) 120.

(*s*) C. J. (1867-68) 212, 235; *ibid.* (1872) 141, 150.

(*t*) C. J. (1872) 396, 407-08.

**Subjects of, and restrictions on power of moving for, returns.**—Returns may be moved for, either by order or address, relating to any public matter, in which the House or the Crown has jurisdiction. They may be obtained from all public offices, and from corporations, bodies, or officers constituted for public purposes, by Acts of Parliament or otherwise: but not from private associations, such as Lloyd's, nor from individuals not exercising public functions. The papers and correspondence sought from government departments should be of a public and official character, and not private or confidential.

On 3 July, 1884, notice having been taken that the order for an address for a copy of Dr. Crichton Browne's treatise on Education related to a private matter over which the House had no jurisdiction, and involved a question of copyright, the order was discharged (*u*).

The opinions of the law officers of the Crown, given for the guidance of Ministers, in any question of diplomacy or state policy, being included in the class of confidential documents, have generally been withheld from Parliament.

In 1858, this rule was, under peculiar and exceptional circumstances, departed from, and the opinions of the law officers of the Crown upon the case of the *Cagliari* were laid before Parliament (*a*).

However ample the power of each House to enforce the production of papers may be, a sufficient cause must be shown for the exercise of that power; and if considerations of public policy can be urged against a motion for papers, it is either withdrawn, or otherwise dealt with according to the judgment of the House.

**Presentation of returns to addresses or orders in a subsequent session.**—When Parliament is prorogued before a return is presented, it is not the modern practice to renew the address or order in the following session, but the order is held to have force from one session to another until it is complied with.

Formerly an order which had not been complied with was renewed in an ensuing session as if no order had previously been given, in accordance with the view that a prorogation puts an end to almost every proceeding pending in Parliament (see p. 262). Returns were often presented, however, by virtue of addresses in a preceding session, without any renewal of the address (*b*), and occasionally in compliance with an order of a former session (*c*).

Returns have been ordered also "to be prepared in order to be laid before the House in the next session" (*d*); and orders of a former session have been read, and the papers ordered to be laid before the House forthwith (*e*). The order for an address made by a former Parliament has been read, and the House being informed that certain persons had not

(*u*) C. J. (1884) 336.

(*a*) C. J. (1857-59) 128; Parl. Deb. (1858) 149, c. 178.

(*b*) C. J. (1843) 428; *ibid.* (1847-48) 579, 775; *ibid.* (1849) 239, 284; *ibid.* (1851-52) 5; *ibid.* (1852-53) 209.

(*c*) C. J. (1844) 301; *ibid.* (1847-48) 131; *ibid.* (1849) 35, 88; *ibid.* (1880) 126. etc.

(*d*) C. J. (1823) 472; *ibid.* (1825-26) 631.

(*e*) C. J. (1823) 72; *ibid.* (1859) 371.

made the return, they were ordered forthwith to make a return to the House (*f*).

PAPERS PRESENTED BY COMMAND, AND PURSUANT TO ACT

Besides the modes of obtaining papers by order and by address both Houses of Parliament are constantly put in possession of documents by command of his Majesty and in compliance with Acts of Parliament.

**Forms observed in presenting papers.**—When occasion arises for the production of certain official documents, certified copies are delivered on oath at the bar of the House of Lords. Other papers and returns were formerly delivered at the bar, upon oath, in the same manner: but now they are either presented by a Minister of the Crown, or are forwarded by the department to the Clerk of the Parliaments, for presentation. In the Commons, when a Minister of the Crown has any papers of special importance to present, he may, if he so desires, go to the bar and bring them up on being called by the Speaker (*g*).

When such papers are brought up, they are generally ordered as a matter of course to lie upon the table, but, upon the question that they do lie upon the table, the mover can found a statement to the House and a debate can arise (*h*); though objection has been taken to a course which brought on debate under inconvenient conditions (*i*).

In accordance with the resolution of the House of 7 April 1851, accounts and other papers which are laid before the House by Act of Parliament, or the order of the House, and by practice papers presented by command of his Majesty, are presented, by the deposit of the papers in the office of the Clerk of the House.

**Presentation of command papers during recess.**—Papers commanded to be presented to either House by his Majesty may (under S.O. No. CIV of the House of Lords and S.O. No. 93 of the House of Commons) be delivered during a parliamentary recess to the Clerk of the Parliaments in the case of the House of Lords and to the librarian in the case of the House of Commons, and such delivery is to be deemed to be the presentation of them to the House. A list of the papers so delivered is entered in the daily record of each House on its re-assembling and the order that they do lie upon the table is then made (*j*).

**"Dummies."**—By a convenient practice, blank papers, familiarly known as "dummies," are frequently presented, instead of the real documents, a practice which the exigencies of public business render

(*f*) C. J. (1825) 413.

(*g*) This formal method of presenting papers is not in accordance with modern practice.

(*h*) Sir G. Lewis, 1857, on an estimate of cost of the Persian War, Parl. Deb. (1857) 146, c. 1132; Mr. Lowe, 1862, and Mr. Bruce, 1865, on papers relating to education, *ibid.* (1862) 165, c. 191; *ibid.* (1865) 178, c. 1535; Mr. Bruce, 1873, on the Royal Parks (Rules), *ibid.* (1873) 214, c. 199; Mr. Gladstone, 1884, on Egypt (the proposed conference), *ibid.* (1884) 289, c. 1104; and 1885, on affairs in the Soudan, *ibid.* (1884-85) 294, c. 873.

(*i*) Parl. Deb. (1865) 178, c. 1535.

(*j*) L. J. (1897) 7; C. J. (1897) 4, etc. A paper has been presented under the standing order during an adjournment from Friday to Monday, C. J. (1922) 107; *ibid.* (1924) 127.



necessary: but if used as a colourable compliance with an order of the House, it is open to grave objections. It was therefore ordered, 20 March 1871, that papers are to "be laid upon the table in such a form as to ensure a speedy delivery thereof to Members" (*k*); and this order was communicated to the several public departments.

A similar order was made in the Lords on 9 February, 1937, to the effect that, in cases where a paper was laid under an Act that prescribed a period during which objection to it could be taken, the period should only commence to run from the date on which the paper became available to Members of the House (*l*).

#### PAPERS TO LIE UPON THE TABLE

When accounts and papers are presented, they are generally ordered to lie upon the table. An order has been made that a paper be taken into consideration on a future day; and on the consideration thereof a motion has been founded (*m*).

Certain categories of papers are referred to committees instead of being ordered to lie upon the table, or if the committee has not been set up, they are first ordered to lie upon the table and subsequently referred to the committee (*n*).

Estimates are referred to the Committee of Supply (*o*).

Appropriation Accounts for the Navy, Army and Air Force are ordered to lie upon the Table and eventually referred to a Committee of the Whole House (*p*).

Reports relative to Private Bills made by the Attorney-General under S.O. 158 are referred to the committees on the bills (*q*), often before a bill has been committed or the committee set up.

#### PRINTED PAPERS

Papers printed by order of the House (*r*) include returns to orders and addresses and certain papers presented by Act which are of outstanding importance. With the exception of Estimates, which are also grouped with those papers which the House orders to be printed, all command papers are printed by order of the department in which they originate. Other papers, classified under various subheads as non-parliamentary publications, are also printed by order of the departments; they comprise the papers presented by Act but not ordered by Parliament to be printed, especially Statutory Rules and Orders. All printed papers are given a number in a series; papers printed by order of the House are numbered in a sessional series by the Votes and Proceedings Office, and all other papers

(*k*) C. J. (1871) 96.

(*l*) L. J. (1936-37) 108.

(*m*) C. J. (1870) 8, 27.

(*n*) C. J. (1935-36) 21, 29.

(*o*) C. J. (1935-36) 94.

(*p*) C. J. (1935-36) 74, 77, 329, and see p. 644.

(*q*) C. J. (1935-36) 135.

(*r*) The order for printing a paper is given in practice by the Librarian of the House after consultation with the presenting department, but the order and printing number are always recorded formally in the Journal.

by the Stationery Office in various series (*s*). Papers of a previous day or even of a former session are occasionally ordered by the House to be printed. Parliamentary papers which have been printed are classified and arranged in volumes at the end of each session. Sometimes part of a return only has been ordered to be printed (*t*).

**Unprinted papers.**—Many papers of minor importance are not printed either by the House or by the departments. Papers which are not printed are open to the inspection of Members in the library of the House where a record of such papers is kept. In some cases, papers of a local or private character have been ordered to be printed at the expense of the parties if they think fit (*u*). In other cases, they have been ordered to be returned to a public department (*a*).

#### DISTRIBUTION OF PAPERS

**Parliamentary papers.**—No copies of any Parliamentary paper may be delivered to any department until they have been made available to Members of Parliament.

Papers printed by order of the Lords are, on application, distributed gratuitously to Members of the House of Commons. They are also accessible to the public by sale through the Stationery Office. The Commons have more fully applied the principle of sale, as the best mode of distribution to the public (*b*).

The Vote Office is charged with the delivery of printed papers to Members of the House, who should leave their addresses at that office, in order that papers may be forwarded to them, either during the session or in the recess.

All parliamentary papers are available to Members on application to the Vote Office, either personally, or by means of a special form supplied for the purpose.

Members are not allowed to receive more than one free copy of each parliamentary paper without an order from the Speaker, though this rule is not strictly enforced where the efficient execution of parliamentary duties requires its relaxation.

**Non-parliamentary publications.**—Each Member can obtain one free copy of all non-parliamentary publications, whether presented to Parliament or not, provided that the paper is required in connection with his parliamentary duties (*c*). A special form provided by the Vote Office is used in applying for non-parliamentary publications.

(*s*) *E.g.* Command Papers are numbered: No. [1] in 1833 to No. [4222] in 1868-69; [C1] in 1870 to [C9550] in 1899; [Cd. 1] in 1900 to [Cd. 9239] in 1918; [Cmd. 1] in 1919 and subsequently.

(*t*) C. J. (1868-69) 209; *ibid.* (1870) 70.

(*u*) C. J. (1846-47) 990; *ibid.* (1857-59) 42, 363; *ibid.* (1860) 505; *ibid.* (1861) 125.

(*a*) C. J. (1845) 1880; *ibid.* (1870) 80.

(*b*) Second Report of Printed Papers Committee, 1835, (H. C.) 392 (1835); C. J. (1835) 461, 544.

(*c*) H. C. Deb. (1924) 171, c. 1994; H. C. Deb. (1927) 203, c. 564, 1040; H. C. 63, p. 108 (1924-25).

**Transmission by post.**—To facilitate the distribution of parliamentary papers, they are sent through the post-office, to all places in the United Kingdom, at a rate of postage not exceeding one penny for every two ounces in weight, whether prepaid or not, provided they be sent without a cover, or with a cover open at the sides, and without any writing or marks upon them. The Members of the Commons are also entitled during a session, to have sent to them free of postage, any parliamentary paper for which they may ask the Vote Office.

By these various regulations, the papers laid before Parliament are effectually published and distributed.

## CHAPTER XIII

### A NEW PARLIAMENT AND OPENING AND CLOSE OF SESSION

This chapter, which is principally concerned with the arrangements for holding a session of Parliament, presents an outline of the general forms employed in summoning, dissolving and proroguing Parliament, and in the adjournment of each House ; it also describes the procedure in opening a session of Parliament, stating separately the procedure peculiar to the opening of the first session of a new Parliament.

Before describing the opening of a session it is necessary to explain briefly the terms and forms employed in relation to the sitting of Parliament—how a session is begun, ended, and periodically interrupted and resumed, or, in technical language, how Parliament is summoned, dissolved, and prorogued and how each House is adjourned.

#### PARLIAMENTARY AND SESSIONAL PERIODS

“ A Parliament ” in the sense of a parliamentary period, is a period not exceeding five years which may be regarded as a cycle beginning and ending with a proclamation. Such a proclamation, which is made by the King on the advice of his Privy Council, on the one hand dissolves an existing Parliament, and on the other orders the issue of writs for the election of a new Parliament and appoints the day and place for its meeting. This period, of course, contains an interregnum between the dissolution of a Parliament and the meeting of its successor during which there is no Parliament in existence ; but the principle of the unbroken continuity of Parliament is for all practical purposes secured by the fact that the same proclamation which dissolves a Parliament provides for the election and meeting of a new Parliament.

A session is the period of time between the meeting of a Parliament, whether after a prorogation or a dissolution, and its prorogation. Parliament is usually prorogued by a commission under the great seal which appoints the day and place of its meeting in the new session. The date so appointed may be deferred by a subsequent proclamation. During the course of a session either House may adjourn itself of its own motion to such date as it pleases. The period between the prorogation of Parliament and its reassembly in a new session is termed a “ recess ” ; while the period between the adjournment of either House and the resumption of its sitting is generally called an “ adjournment.”

A prorogation terminates a session ; an adjournment is an interruption in the course of one and the same session.

#### SUMMONS OF PARLIAMENT

A new Parliament is summoned in pursuance of a proclamation issued by the King with the advice of the Privy Council. This proclamation, which also dissolves the old Parliament, orders the issue of writs by the Lord Chancellor and by the Governor of Northern Ireland, and appoints a day and place for the meeting of the new Parliament (a).

**Date of meeting of Parliament.**—The day of meeting of a new Parliament is, as stated above, appointed in the proclamation. The Representation of the People Act, 1918 (s. 21 (3)), provides that the interval between the date of the proclamation and the meeting of Parliament must be not less than twenty clear days. The meeting of Parliament may be deferred, however, by a further proclamation proroguing it to a later day, not being less than fourteen days from the date of such proclamation (b).

The Parliament (Elections and Meeting) Act, 1943 (s. 1 (2) and 2 (2) (b)) substituted a different interval for that prescribed by the 1918 Act, for the purpose of a "war election," *i.e.*, a non-university election held while the National Registration Act, 1939, remains in force.

#### DISSOLUTION OF PARLIAMENT

Parliament is dissolved either by efflux of time or by proclamation. Under the Septennial Act, 1715, it ceased to exist after seven years from the day on which, by writ of summons, it was appointed to meet, a period which has been reduced to five years by the Parliament Act, 1911 (s. 7). Parliament is no longer dissolved by the demise of the Crown (c).

Parliament is usually dissolved by proclamation under the great seal, after having been prorogued to a certain day (see p. 277), but such a proclamation has been issued at a time when both Houses stood adjourned (d). When Parliament is prorogued with a view to its dissolution, it is the usual, but not the invariable, practice to issue the proclamation the same day (e) and dispatch the writs by that evening's post.

#### PROROGATION AND ADJOURNMENT

The prorogation of Parliament is a prerogative act of the Crown. Just as Parliament can only commence its deliberations at the time appointed by the King, so it cannot continue them any longer than he pleases. But each House exercises its right to adjourn itself independently of the Crown and of the other House.

**Effect of prorogation and adjournment respectively.**—The effect of a prorogation is at once to suspend all business until Parliament

(a) C. J. (1935-36) 2.

(b) Prorogation Act, 1867.

(c) Representation of the People Act, 1867 (s. 51).

(d) C. J. (1922) 330.

(e) C. J. (1934-35) 352 ; *ibid.* (1935-36) 2.

shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons and appeals before the House of Lords (*f*). Every bill must therefore be renewed after a prorogation, as if it were introduced for the first time (*g*).

An adjournment has no such effect on parliamentary proceedings. Upon reassembling, each House proceeds to transact the business previously appointed, and all proceedings are resumed at the stage at which they were left before the adjournment.

**Procedure of prorogation.**—Parliament is prorogued either by a commission (preceded by a proclamation) or by a proclamation alone.

Under the Prorogation Act, 1867, Parliament may be prorogued by a proclamation alone except at the close of a session.

*Prorogation by commission.*—At the close of a session, according to the usual procedure, the prorogation of Parliament is effected by an announcement of the King's command to that effect made before both Houses in the House of Lords by one of the commissioners by virtue of a royal commission.

The details of this procedure are described at the end of this chapter (p. 277). If his Majesty pleases to be present at the prorogation of Parliament his command is signified by the Lord Chancellor or Speaker of the House of Lords. The last occasion of the prorogation of Parliament by the Sovereign in person was in 1854.

*Prorogation and further prorogation by proclamation.*—When Parliament stands summoned (after a dissolution) or prorogued to a certain day, it may be prorogued or further prorogued to a later day, under the Prorogation Act, 1867, by a proclamation made by the King on the advice of the Privy Council.

The interval prescribed by this Act between the date of the proclamation and the day to which it prorogues Parliament is not less than fourteen

(*f*) 2 Hatsell, 335. See also statute 45 Geo. 3, c. 117, to continue proceedings in the House of Lords against Mr. Justice Fox over the prorogation. See also an exception regarding documents laid before Parliament, p. 256; proceedings in certain cases on private bills, p. 957; and on a public bill, p. 556, n. (*k*).

(*g*) Proposals have been made to provide, either by statute or by standing orders, for the suspension of bills from one session to another, or for resuming proceedings upon such bills, notwithstanding a prorogation. These schemes have been discussed in Parliament and carefully considered by committees: but various considerations have restrained the legislature from disturbing the constitutional law by which parliamentary proceedings are discontinued by prorogation. Earl of Derby's Parliamentary Proceedings Adjournment Bill, 1848, Parl. Deb. (1848) 98, cc. 329, 981, 1255; *ibid.* (1848) 99, c. 246; *ibid.* (1848) 100, c. 131; Report of Commons Committee on Public Business, H. C. 644 (1847-8); Report of Lords Committee on Public Business, H. L. 95 (1861); Report of Commons Committee on Business of the House, H. C. 173 (1861); Marquess of Salisbury's Parliamentary Proceedings Bill, 1869, Parl. Deb. (1868-69) 194, c. 588; *ibid.* (1883) 279, c. 2; Report of Joint Committee on Dispatch of Business in Parliament, H. C. 386 (1868-69); Reports of Commons Committees on Public Business, H. C. 268 (1878); and on Abridged Procedure on partly considered bills, H. C. 298 (1890). In session 1903, provision was made for resuming in the following session the proceedings on the Port of London Bill as reported from the Joint Committee. A resolution for the resumption of proceedings on the bill was agreed to in the following session, but further progress was not made with the bill, C. J. (1904) 181. See also C. J. (1930-31) 444; *ibid.* (1931-32) 322; *ibid.* (1932-33) 8. In session 1919 a motion for the suspension of further proceedings on the War Emergency Laws (Continuance) Bill until the following session was withdrawn, C. J. (1919) 428; H. C. Deb. (1919) 123, c. 1291. For the suspension of private and provisional order bills, see Chapter XXXIII.

days. But when Parliament stands prorogued this interval is shortened by the Meeting of Parliament Act, 1870 (s. 2), as amended by s. 34 of the Parliament (Elections and Meeting) Act, 1943, so that the House may meet on any day after the date of such proclamation.

When it is intended that on the day to which it is so prorogued, or further prorogued, Parliament shall meet for the dispatch of business, a clause is added to the proclamation stating that Parliament will then "assemble and be holden for the dispatch of divers urgent and important affairs." Even when Parliament stands prorogued to a specified day "for the dispatch of business" it may similarly by proclamation be prorogued to a later day (*h*).

**Meeting of Parliament accelerated during prorogation.**—Just as the King is empowered to postpone the meeting of Parliament, so authority is vested in him to accelerate its meeting.

(1) *Generally.*—When Parliament stands prorogued to a certain day, the king may, by the Meeting of Parliament Act, 1797, as amended by the Meeting of Parliament Act, 1870, and s. 34 of the Parliament (Elections and Meeting) Act, 1943, issue a proclamation, giving notice of his intention that Parliament shall meet for the dispatch of business on any day after the date of the proclamation; and Parliament then stands prorogued to that day, notwithstanding the previous prorogation.

Pursuant to the first of these Acts, Parliament was assembled in September 1799 (*i*); and again on 12 December 1854, Parliament then standing prorogued to the 14th; and, in 1857, in consequence of the suspension of the Bank Act of 1844, a proclamation was issued on 16 November assembling Parliament on 3 December. In 1900 the new Parliament which had been prorogued from 1 November, the day for which it had been summoned, to 10 December was summoned to meet for the dispatch of business on 3 December by a proclamation dated 26 November (*k*). In 1921 Parliament, which had been prorogued until 30 January 1922 was summoned to meet on 14 December by a proclamation dated 7 December (*l*).

(2) *In emergency.*—Various Acts (*m*) have provided that whenever the Crown shall cause the militia to be embodied, or the army reserve or militia reserve or air force reserve to be called out on permanent service or the Territorial Army to be embodied, when Parliament stands prorogued or adjourned for more than ten days, the King shall issue a proclamation for the meeting of Parliament within ten days (*n*). The Emergency Powers Act, 1920, also requires that where a proclamation declaring that a state of emergency exists has been made, the occasion

(*h*) C. J. (1887) 2; *ibid.* (1922) 2.

(*i*) C. J. (1798-99) 745; *ibid.* (1799-1800) 3.

(*k*) C. J. (1900) 404.

(*l*) C. J. (1921) 402.

(*m*) Reserve Forces Act, 1882, s. 13, and Militia Act, 1882, s. 19; Territorial and Reserve Forces Act, 1907, s. 17 (2); S. R. & O. 1918 (No. 1064), 1, p. 75. For the power of Parliament to present an address to the Crown against the embodiment of the Territorial Army, see Territorial and Reserve Forces Act, 1907, s. 17 (1).

(*n*) This procedure has been temporarily suspended by s. 1 of the Reserve and Auxiliary Forces Act, 1939. On 7 October 1899, Parliament, which stood prorogued till 27 October, was summoned by proclamation to meet on 17 October, C. J. (1899) 428. See also C. J. (1792) 1092 for proclamation under 26 Geo. 3, c. 107, s. 97, dated 1 December 1792, summoning Parliament, which stood prorogued till 3 January 1793, to meet on 13 December 1792.

thereof is to be communicated forthwith to Parliament, and if Parliament is separated by an adjournment or prorogation which will not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days (o).

**Meeting of Parliament accelerated during adjournment.**—When Parliament is dispersed through the adjournment of both Houses its reassembly can be effected either by proclamation or by virtue of powers specifically conferred by each House on its Speaker.

(1) *Pursuant to statute.*—A power of interfering with adjournments in certain cases has been conceded to the Crown by statute. The Meeting of Parliament Act, 1799, amended by the Meeting of Parliament Act, 1870, enacts that when both Houses of Parliament stand adjourned for more than fourteen days, the King may issue a proclamation, with the advice of his privy council, declaring that the Parliament shall meet on a day not less than six days from the proclamation; and the Houses of Parliament then stand adjourned to the day and place declared in the proclamation; and all the orders which may have been made by either House, and appointed for the original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

Further the statutory provisions which necessitate the meeting of Parliament in the event of certain emergencies (see above) apply not only when Parliament is separated by a prorogation but also when it is separated by an adjournment of more than a certain duration.

(2) *Pursuant to order of each House.*—In the House of Lords, orders affecting adjournment for a period are made by special resolution independent of the adjournment motion. Thus, on 10 August 1914, the House resolved "That whenever during the present session of Parliament the House stands adjourned for more than two days, and it appears to the satisfaction of the Lord Chancellor that the public interest requires that the House should meet at any earlier time during such adjournment, the Lord Chancellor may give notice to the Peers that he is so satisfied, and thereupon the House shall meet at the time stated in such notice and shall transact its business as if it had been duly adjourned to that time." When Parliament is about to separate for an adjournment of any considerable length, it has been customary since the summer adjournment of 1931 (p) for the Lords and the Commons by resolution to authorize the Lord Chancellor and the Speaker respectively, if he is satisfied that the public interest requires that the House should meet on an earlier day than that to which it stands adjourned, to give notice that he is so satisfied and appoint a day for the reassembling of the House. The resolution has recently been extended; the Chairman of Committees in the Lords,

(o) In 1921 a proclamation declaring a state of emergency was made on 31 March. The Lords stood adjourned till 7 April and the Commons till 4 April. The Lords met on 4 April pursuant to a proclamation dated 1 April, L. J. (1921) 95.

In 1926 proclamations declaring a state of emergency were made on 25 August, 22 September, and 20 October. The Lords stood adjourned till 21 October and the Commons till 9 November. Both Houses met on 30 August and 27 September and the Commons on 25 October pursuant to proclamations dated 25 August, 22 September, and 20 October respectively, L. J. (1926) 286, 289. C. J. (1926) 325, 330, 336.

(p) Before 1931 such resolutions were passed on four occasions, viz.: the summer adjournments of 1920, 1921, 1922, and 1924.



and the Chairman of Ways and Means or Deputy Chairman in the Commons, are now empowered to act in the absence of the Lord Chancellor or Speaker. In the case of the Commons the resolutions up to and including that of the Christmas adjournment of 1931 did not authorize the Speaker to give notice until he had consulted the Government, and the resolutions since that of the summer adjournment of 1932 authorize him to give notice only after representations made to him by the Government.

Both Houses met pursuant to such notices on 8 September 1931, 18 October 1932, 22 October 1935, 28 September 1938, and on 13 April, 24 August, 29 August and 1 September 1939 (*q*).

The Commons also met on 30 September 1924 pursuant to the notice of the Speaker, but it was not necessary for the Lord Chancellor to give notice as the Lords stood adjourned to that day (*r*).

### MEETING OF A NEW PARLIAMENT

The principal proceedings which distinguish the meeting of a new Parliament from the opening of any subsequent session are the election of a Speaker, and the taking and subscription of the oath by Members of both Houses.

On the day appointed by royal proclamation for the first meeting of a new Parliament for dispatch of business (see p. 273), the Members of both Houses assemble in their respective chambers. In the House of Lords, the Lord Chancellor acquaints the House, "that it not being convenient for his Majesty to be personally present here this day, he had been pleased to cause a commission under the great seal to be prepared, in order to the holding of this Parliament." The five lords commissioners, being in their robes and seated on a form between the throne and the woolsack, then command the gentleman usher of the Black Rod to let the Commons know that "the lords commissioners desire their immediate attendance in this House, to hear the commission read."

### COMMONS ATTEND IN THE HOUSE OF PEERS

On receiving the message from Black Rod, the Clerk and the House of Commons go up to the House of Peers. The Lord Chancellor there addresses the members of both Houses, and acquaints them that his Majesty has "thought fit, by letters patent under the great seal, to empower" several lords, therein named as commissioners, "to do all things in his Majesty's name, which are to be done on his Majesty's part in this Parliament." The letters patent may then be read, after which the Lord Chancellor, acting in obedience to these general directions, again addresses both Houses, and acquaints them :—

(*q*) L. J. (1930-31) 355, 359; *ibid.* (1931-32) 308; *ibid.* (1934-35) 368, 374; *ibid.* (1937-38) 371; *ibid.* (1938-39) 175, 371, 374, 375; C. J. (1930-31) 401, 403; *ibid.* (1931-32) 300, 301; *ibid.* (1934-35) 340, 342; *ibid.* (1937-38) 403; *ibid.* (1938-39) 170, 401, 403, 404. See also p. 811, where the subject is dealt with as part of Emergency Procedure.

(*r*) C. J. (1924) 377, 378.

"That, as soon as the Members of both Houses shall be sworn, the causes of his Majesty calling this Parliament will be declared to you ; and it being necessary a Speaker of the House of Commons should be first chosen, it is his Majesty's pleasure that you, Members of the House of Commons, repair to the place where you are to sit, and there proceed to the choice of some proper person to be your Speaker ; and that you present such person whom you shall so choose, here, to-morrow (at an hour stated), for his Majesty's royal approbation" (L. J. (1935-36) 5, etc.).

On the opening of a new Parliament, the commissioners, without express directions to that effect in the commission, direct the Commons to elect a Speaker, and afterwards signify the King's approbation.

#### PROCEEDINGS IN THE LORDS—OATHS

The Commons withdraw immediately after the King's pleasure for the election of a Speaker has been signified, and return to their own House, while the House of Lords is adjourned during pleasure, to unrobe. On that House being resumed, the prayers, with which the business of each day is begun, are read (for the first time) by a bishop, or if no bishop be present, by any Peer in holy orders ; or if there be none present, then by the Lord Chancellor or lord on the woolsack, or by any Peer who may be in the House. The Lord Chancellor first takes and subscribes the oath singly, at the table. The Clerk of the Crown delivers a certificate of the return of the sixteen representative Peers of Scotland ; and Garter king-of-arms the roll of the lords temporal ; after which the lords may take and subscribe the oath required by law (*s*) (see p. 271). The Lord Chancellor explains to the House the descent of a Peer who comes to take the oath, on occasions when such explanation is necessary (*t*). A Peer of the blood royal takes the oath singly, like the Lord Chancellor (*u*). At this time also Peers may be introduced. (See p. 318.)

The oath is required to be taken by all Peers in each new Parliament before they can sit or vote (see p. 320) ; penalties for omission to take the oath, being applicable to Members of both Houses, are described below, p. 272. The oath is also taken to the new sovereign after a demise of the Crown. A Peer who desires to take the oath obtains his writ, which is placed in readiness for him in the precincts of the Chamber, and attending with it at the table, takes the oath, signs the roll and shakes hands with the Lord Chancellor.

Peers who object to be sworn may avail themselves of the privilege of affirmation in lieu of taking the oath, under section 1 of the Oaths Act, 1888.

#### ELECTION OF A SPEAKER BY THE COMMONS

The Commons, in the meantime, proceed to the election of their Speaker. A Member, addressing himself to the Clerk (who indicates him as mover by rising and pointing to him), proposes to the House some other Member then present, and moves that he "do take the chair of this

(*s*) See 1 Anson 229 (1922 edit.).

(*t*) L. J. (1888) 6 ; *ibid.* (1889) 6 ; *ibid.* (1907) 183 ; *ibid.* (1913) 95.

(*u*) L. J. (1863-64) 6 ; *ibid.* (1886) 6 ; *ibid.* (1892) 410 ; *ibid.* (1893-94) 17.

House as Speaker," which motion is seconded by another Member (who is also indicated by the Clerk).

It is customary for the mover and seconder to be unofficial Members. In 1789 Mr. Pitt was desirous of proposing Mr. Addington himself: but Mr. Hatsell, on being consulted, said, "I think that the choice of the Speaker should not be on the motion of the minister. Indeed, an invidious use might be made of it, to represent you as the friend of the minister, rather than the choice of the House." Mr. Pitt acknowledged the force of this objection; Sidmouth, i. 78. A county and a borough Member are generally selected for proposing and seconding the Speaker. In 1868, a borough and university Member performed this office. When a Speaker is re-elected without opposition, it has been usual for the proposer and seconder to be taken from different sides of the House, as in 1852, 1859, 1866, 1868, 1874, 1880, 1886, 1892, 1895 (Sess. II), 1900 (Sess. II), 1906, 1910, 1911, 1922 (Sess. II), 1924, 1924-25, 1929-30, 1931-32, 1935-36, and 1945-46. In session 1919 two senior Members of the House chosen from the parties constituting the coalition majority acted as proposer and seconder.

If no other Member be proposed as Speaker, the Member proposed is called by the House to the chair, without any question being put (a). He now stands up in his place and expresses his sense of the honour proposed to be conferred upon him and submits himself to the House; the House again unanimously calls him to the chair, when his proposer and seconder take him out of his place and conduct him to the chair.

*If another Member be proposed*, a similar motion is made and seconded in regard to him; and both the candidates address themselves to the House. A debate ensues in relation to the claims of each candidate, in which the Clerk continues to act as presiding officer, standing up and calling the Members as they rise to speak by pointing to them. When this debate is closed, the Clerk puts the question that the Member first proposed "do take the chair of this House as Speaker," and if the House divide, he directs one party to go into the right lobby, and the other into the left lobby, and appoints two tellers for each. If the majority be in favour of the Member first proposed, he is at once conducted to the chair: but if otherwise, a similar question is put in relation to the other, which being resolved in the affirmative, that Member is conducted to the chair by his proposer and seconder (b). According to usage, the two Members who are proposed for the chair take part in the division, each Member giving his vote in favour of his rival (c).

**Mr. Speaker elect returns thanks.**—The Speaker elect, on being conducted to the chair, stands on the upper step and expresses "his grateful thanks," or "his humble acknowledgments," "for the high honour the House has been pleased to confer upon him"; and then takes

(a) 2 Hatsell 218; C. J. (1857) 119; *ibid.* (1866) 9; *ibid.* (1884) 74; *ibid.* (1886) 315; *ibid.* (1892) 412; *ibid.* (1895) 340; *ibid.* (1900) 406; *ibid.* (1905) 249; *ibid.* (1906) 5; *ibid.* (1910) 5; *ibid.* (1911) 5; *ibid.* (1919) 5; *ibid.* (1921) 114; *ibid.* (1922) 333; *ibid.* (1924) 5; *ibid.* (1924-25) 5; *ibid.* (1928) 215; *ibid.* (1929-30) 5; *ibid.* (1931-32) 5; *ibid.* (1935-36) 5.

(b) C. J. (1835) 5.

(c) Election of Mr. Abercromby, 19 February 1835, Parl. Deb. (1835) 26, c. 56. Election of Mr. Shaw Lefevre, C. J. (1839) 274, Division List, 27 May 1839, No. 75. On the occasion of the election of Mr. Gully, 10 April 1895, both candidates abstained from voting. In accordance with precedent, Government tellers were appointed.

his seat. The mace, which up to this time has been under the table, is now laid upon the table, where it is always placed during the sitting of the House with the Speaker in the chair. Mr. Speaker elect is then congratulated by some leading Members; he puts the question for adjournment and, when the House adjourns, leaves the House without the mace before him.

**Royal approbation of the Speaker elect.**—The House meets on the following day, and Mr. Speaker elect takes the chair and awaits the arrival of Black Rod from the lords commissioners. When that officer has delivered his message, Mr. Speaker elect, with the House, goes up to the House of Peers, and acquaints the lords commissioners:—

“That in obedience to his Majesty’s command, his Majesty’s most faithful Commons, have, in the exercise of their undoubted right and privileges, proceeded to the election of a Speaker,” and that as the object of their choice he now presents himself at the bar of the Lords, and submits himself with all humility to his Majesty’s gracious approbation (L. J. (1935–36) 8, etc.).

In reply, the Lord Chancellor assures him of his Majesty’s sense of his sufficiency, and “that his Majesty most readily approves and confirms him as the Speaker.”

The only instance of the royal approbation being refused was in the case of Sir Edward Seymour, in 1678 (6 March, 1678–9; 4 Parl. Hist., 1092; 6 Grey Deb. 404, *et. seq.*, 424).

**Claim to privileges.**—When the Speaker has been approved, he lays claim, on behalf of the Commons, “by humble petition to his Majesty, to all their ancient and undoubted rights and privileges,” which being confirmed, the Speaker, with the Commons, retires from the bar of the House of Lords.

**Election of Speaker in course of session.**—The Speaker, thus elected and approved, continues in that office during the whole Parliament, unless in the meantime he resigns or is removed by death. It will be convenient to indicate here the special forms that are observed in the election of a Speaker during the session.

**Announcement of vacancy.**—If the vacancy in the chair is caused by the Speaker’s acceptance of office, protracted illness, or death, the Clerk announces the death of the Speaker (*d*), or, at the ensuing meeting of the House, reads a letter which the Speaker, stating the cause of his retirement (*e*) has addressed to the Clerk. Immediately after the announcement has been made, the mace is brought into the House by the Serjeant and is laid under the table (*f*). A Member then rises, and, addressing the Clerk, moves the adjournment of the House, who puts the question, “by the direction of the House.” The Speaker, on other occasions, informs the House of the cause that compels his retirement from the chair (*g*).

(*d*) C. J. (1788–89) 45; *ibid.* (1942–43) 57.

(*e*) C. J. (1788–89) 434; *ibid.* (1801) 33; *ibid.* (1801–02) 92; *ibid.* (1817) 306.

(*f*) For appropriate procedure when the death is announced during a sitting, see C. J. (1788–89) 45; *ibid.* (1942–43) 57.

(*g*) Mr. Speaker Manners Sutton, C. J. (1831–32) 534; Mr. Speaker Abercrombie, *ibid.* (1839) 271; Mr. Speaker Shaw Lefevre, *ibid.* (1857) 89; Mr. Speaker Denison, *ibid.* (1872) 9; Mr. Speaker Brand, *ibid.* (1884) 68; Mr. Speaker Peel, *ibid.* (1895) 139; Mr. Speaker Gully, *ibid.* (1905) 243; Mr. Speaker Lowther, *ibid.* (1921) 109; Mr. Speaker Whitley, *ibid.* (1928) 210.

*Procedure of election to fill vacancy.*—In the event of a vacancy during the session, similar forms are observed in the election and approval of a Speaker; except that, instead of his Majesty's desire being signified by the Lord Chancellor in the House of Lords, a Minister of the Crown, in the Commons, acquaints the House that his Majesty "gives leave to the House to proceed forthwith to the choice of a new Speaker" (*h*); and when the Speaker has been chosen, the same Minister acquaints the House that it is his Majesty's pleasure that the House should present their Speaker to-morrow (at an hour stated) in the House of Peers, for his Majesty's royal approbation (*i*). Mr. Speaker elect puts the question for adjournment, and, when the House adjourns, he leaves the House without the mace before him. On the following day, Mr. Speaker elect takes the chair, after prayers have been read, and awaits the arrival of Black Rod from the royal commissioners, by whom the royal approbation is given under a commission for that purpose, with the same forms as at the meeting of a new Parliament, except that the claim of privileges is omitted (*k*). On returning from the House of Lords the new Speaker reports his approbation by the King, and repeats his acknowledgments to the House. The appointed business for the day is then entered upon.

It should be noted that these forms preclude the proposal of any Member as Speaker during the session, who has not taken the oath and his seat. (See case of Mr. Charles Dundas, proposed by Mr. Sheridan, 11 February 1801 (Parl. Hist. (1800-01) 35, c. 951.) In 1822, this consideration prevented Mr. Speaker Manners Sutton from vacating his seat in order to stand for the University of Cambridge (1 Court and Cabinets of Geo. IV, 394; Colchester iii. 260).

#### OATH IN THE COMMONS

The Speaker, who has been elected at the commencement of a Parliament, on returning from the Lords, reports to the House his approbation by the King and the confirmation of their privileges and "repeats his most respectful acknowledgments to the House for the high honour they have done him." He then puts the House in mind that the first thing to be done is to take and subscribe the oath required by law; and himself first, alone, standing upon the upper step of the chair, takes and subscribes the oath accordingly; in which ceremonies he is followed by the other Members who are present.

The occupants of the government front bench (see p. 221) are the first to be sworn, and after them the occupants of the opposition front bench. When these and any privy councillors not included among them have taken the oath the Speaker calls the other Members present bench by bench,

(*h*) C. J. (1839) 274; *ibid.* (1872) 23; *ibid.* (1884) 74; *ibid.* (1895) 149; *ibid.* (1905) 249; *ibid.* (1921) 114; *ibid.* (1928) 215. For early instances of proceedings on the death of a Speaker, see D'Ewes, 95, 120; 1 C. J. (1580) 116; Parl. Hist. (1066-1625) 1, c. 811.

(*i*) In 1895 and in 1905 the Speaker was elected on the day upon which the House adjourned for Easter and Whitsuntide respectively, and was presented for the sovereign's approbation on the first day on which the House met after the adjournment, C. J. (1895) 149; *ibid.* (1905) 249.

(*k*) L. J. (1839) 308; C. J. (1693-97) 272; *ibid.* (1839) 274; *ibid.* (1872) 23; *ibid.* (1884) 74; *ibid.* (1895) 149; *ibid.* (1905) 249; *ibid.* (1921) 115; *ibid.* (1928) 215. On the election of Mr. Addington, in 1789, the King himself came down to the House of Lords to signify his approbation in person, C. J. (1788-89) 435; Sidmouth, i. 68.

giving precedence to the various benches at his discretion, but as a rule calling those on his right and those on his left alternately. (H. C. Deb. (1935-6) 307, c. 13.)

On the following day the daily prayers are read, for the first time, by Mr. Speaker's chaplain; and the Speaker, if the necessity arises, counts the House, and cannot take the chair unless forty members are present, as the oath must, under Section 3 of the Parliamentary Oaths Act, 1866, be taken whilst a full House of Commons is duly sitting with their Speaker in his chair.

The Members continue to take the oath on that day, after which the greater part are sworn and qualified to sit and vote.

The names of Members returned at a general election have been entered in the Journal as taking the oath since session 1919 (C. J. (1919) 5) as a Member is not entitled to the return of the sum deposited with the returning officer until he has taken the oath (Representation of the People Act, 1918, s. 27 (1)).

**Oath on demise of Crown.**—In the event of the demise of the Crown Parliament meets immediately, pursuant to the Succession to the Crown Act, 1707, and all Members of both Houses again take the oath (l).

There appears to be some doubt whether the obligation to take the oath in these circumstances is statutory or rests merely upon the custom of Parliament. The latter opinion has been stated with authority in the House of Commons (H. C. Deb. (1937) 319, c. 762).

On the death of Edward VII the House of Commons met on Saturday, 7 May 1910, but, owing to the unavoidable absence of the Speaker, the Chairman of Ways and Means and the Deputy Chairman, adjourned to the following Monday when the Chairman of Ways and Means acting as Deputy Speaker and other Members took the oath (C. J. (1910) 147). The Speaker took the oath at the first sitting of the House at which he was present (C. J. (1910) 154).

**Manner of taking the oath.**—The Promissory Oaths Act, 1868, substituted for various earlier forms the oath which with the necessary alteration in the sovereign's designation (m) is now in the following form: "I — do swear that I will be faithful and bear true allegiance to his Majesty King George, his heirs and successors, according to law. So help me God" (n).

A Member who desires to do so may take the oath in this form and kiss the book, but the ordinary form and manner of administering and taking the oath are prescribed by section 2 of the Oaths Act, 1909. Under this section the person taking the oath holds the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and says or repeats after the officer administering the oath the words, "I swear by Almighty God that . . ." followed by the words of the oath prescribed by law. A Member may also take the oath with uplifted hand in the manner usually followed in Scotland (o).

(l) L. J. (1837) 420, etc.; C. J. (1837) 490, etc.; L. J. (1901) 4, etc.; C. J. (1901) 5, etc.; L. J. (1910) 121, etc.; C. J. (1910) 150, etc.; L. J. (1935-36) 51, etc.; C. J. (1935-36) 50, etc.; L. J. (1936-37) 59, etc.; C. J. (1936-37) 59, etc.

(m) Promissory Oaths Act, 1868, s. 10

(n) Promissory Oaths Act, 1868, ss. 2, 8.

(o) Oaths Act, 1888, s. 5.

**Affirmation in lieu of oath.**—Members who object to be sworn may avail themselves of the power granted by section 1 of the Oaths Act, 1888 (*p*), which enacts that a solemn affirmation may be made in lieu of an oath by every person who states, as the ground of such objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief.

**Time for taking the oath.**—A definite time at the beginning of a sitting is reserved for Members returned after a general election who desire to take the oath or make the affirmation required by law on any day after the days set aside for taking the oath (*q*) (see *p*. 341).

**Penalties for omission to take the oath.**—By the Acts 30 Chas. 2, stat. 2; 13 Will. 3, c. 6; and 1 Geo. 1, stat. 2, c. 13, severe penalties and disabilities were inflicted upon any Member of either House who sat or voted without having taken the oaths. By the Parliamentary Oaths Act, 1866, any Peer voting by himself or his proxy, or sitting in the House of Peers without having taken the oath, is subject, for every such offence, to a penalty of 500*l.*; and any Member of the House of Commons who votes as such, or sits during any debate after the Speaker has been chosen, without having taken the oath, is subject to the same penalty, and his seat is also vacated in the same manner as if he were dead. These penalties can be recovered upon the suit of the Crown alone (*r*). When Peers or Members have neglected to take the oaths from haste, accident, or inadvertence, Acts of indemnity have been passed to relieve them from the consequences of their neglect (*s*). In the Commons, however, it is necessary to move a new writ immediately the omission is discovered, as the Member's seat is vacated (*t*).

But although a Member may not sit and vote until he has taken the oath, he may vacate his seat by the acceptance of the Chiltern Hundreds and is entitled to all the other privileges of a Member (but not to his salary), being regarded, both by the House and by the laws, as qualified to serve, until some other disqualification has been shown to exist.

Thus, on 13 April 1715, it was resolved "that Sir Joseph Jekyll was capable of being chosen of a committee of secrecy, though he had not been sworn at the Clerk's table" (*u*). On 11 May 1858, acting upon this precedent, the House added Baron Rothschild, who had then continued a Member for

(*p*) See also S. O. No. 84.

(*q*) C. J. (1886) 5; Parl. Deb. (1886) 302, c. 21. On 9 March 1882, the Speaker had stated that to object to any Member taking the oath except on grounds public or notorious, or within the cognizance of the House, would be simply vexatious, Parl. Deb. (1882) 267, c. 442.

(*r*) *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354.

(*s*) 45 Geo. 3, c. 5 (Lord J. Thynne); 56 Geo. 3, c. 48 (Earl Gower); 1 Will. 4, c. 8 (Lord R. Grosvenor); 5 Vict. c. 3 (Earl of Scarborough); Lord Plunket and Lord Byron 1880, private Acts (not printed). In recent cases in the House of Lords, Acts of Indemnity have not been introduced. Four peers having sat and voted in session 1906 without having taken the oath (Parl. Deb. (1906) 163, c. 1291; *ibid.* 164, c. 4), the matter was referred to the select committee on the Standing Orders of the House in 1907 (see L. J. (1907) 105; H. L. 95, p. iv (1907)).

(*t*) C. J. (1805-06) 148; *ibid.* (1812) 286; *ibid.* (1813-14) 144; *ibid.* (1816-17) 42; *ibid.* (1830) 353; *ibid.* (1924) 74. In Mr. Bradlaugh's case the Chiltern Hundreds (see *p*. 212) were accepted.

(*u*) C. J. (1714-18) 59; 6 Chandler, Deb. 19; Parl. Hist. (1714-22) 7, c. 57; 2 Hatsell, 88, n.

eleven years without having taken the oaths, to the committee appointed to draw up reasons to be offered to the Lords for disagreeing to the Lords' amendments to the Oaths Bill (*a*), at a conference of which he was appointed one of the managers. On 11 May 1880, Mr. Bright was appointed a member of the Parliamentary Oath Committee upon which he served and voted, before he had made his affirmation.

**Certificate of return.**—At the beginning of a Parliament, the Clerk of the Crown in Chancery delivers to the Clerk of the House of Commons a Return Book of the names of the Members returned to serve in the Parliament. This book is sufficient evidence of the return of a Member.

**Subscription of oath and affirmation.**—So soon as a Member has been sworn, or has made his affirmation, he subscribes at the table the "test roll," which is a roll of parchment folded into the shape of a book, headed by the oath and affirmation which he has taken or made; and the Member is then introduced to the Speaker by the Clerk of the House. The rules which provide for the time and manner of taking the oath by Members returned at bye-elections are stated on pp. 341-2.

When the greater part of the Members of both Houses are sworn the preliminaries peculiar to the first session of a new Parliament are concluded, and Parliament is ready to hear the King's speech and to proceed with the initial business of the session.

## OPENING OF NEW SESSION

In every session but the first of a Parliament, as there is no election of a Speaker, nor any general swearing of Members, the session is opened at once by the King's speech, without any preliminary proceedings in either House. Until the causes of summons are declared by the King, either in person, or by commission, neither House can proceed with any public business: but the causes of summons, as declared from the Throne, do not bind Parliament to consider them alone, or to proceed at once to the consideration of any of them.

On the day appointed both Houses usually meet at twelve o'clock (*b*). In the Commons prayers are said before the King's speech, but in the Lords usually not until their second meeting, later in the afternoon (*c*). The Speaker, after prayers, sits in the Clerk's chair until Black Rod approaches the door, when he proceeds to his own chair to receive him. This form is observed, because no business can be transacted until Parliament has been opened by the Crown. In the absence of a quorum the message from the Crown would make a House (see pp. 313-14).

## OPENING BY KING IN PERSON

When the King meets Parliament in person, he proceeds in state to the House of Lords, where, seated on the Throne, adorned with his crown and regal ornaments, and attended by his officers of state (all the lords being in their robes, and standing until his Majesty commands them to be

(*a*) C. J. (1857-59) 162, 167; Parl. Deb. (1858) 150, c. 336, 430.

(*b*) Before 1919 the usual hour was two o'clock.

(*c*) When a prince of the blood is to be introduced, prayers are said before the sovereign's arrival.



seated), he commands the gentleman usher of the Black Rod, through the Lord Great Chamberlain, to let the Commons know "it is his Majesty's pleasure they attend him immediately, in this House." The usher of the Black Rod goes at once to the door of the House of Commons, which he strikes three times with his rod; and, on being admitted, he advances up the middle of the House towards the table, making three obeisances to the chair, and says, "Mr. Speaker, the King *commands* this honourable House to attend his Majesty immediately in the House of Peers." The Speaker, with the House, immediately goes up to the bar of the House of Peers; upon which the King reads his speech to both Houses of Parliament, from a printed copy, which is delivered into his hands by the Lord Chancellor, kneeling upon one knee (*d*).

If deemed expedient, the precedence of Members in going to the House of Lords on the opening and prorogation of Parliament by his Majesty, can be determined by ballot, in pursuance of resolutions (C. J. (1851-52) 443, 445). For the arrangements made in session 1902 which have been adopted on subsequent occasions, see Report of the Joint Committee on Presence of the Sovereign in Parliament (H. C. 212, p. x. (1901)).

#### OPENING BY COMMISSION

When the King is not personally present, the causes of summons are declared by the lords commissioners. The usher of the Black Rod is sent, in the same manner, to the Commons, and acquaints the Speaker that "the lords commissioners *desire* the immediate attendance of this honourable House in the House of Peers, to hear the commission read" (*e*); and when the Speaker and the House have reached the bar of the House of Peers, the Lord Chancellor reads the royal speech to both Houses.

Until the end of the session of 1867, the lords commissioners' speech was framed as proceeding from themselves, and the sovereign's name was used throughout in the third person; but on that and subsequent occasions, the speech was that of the sovereign and was framed in the first person, and delivered by the Lord Chancellor, or one of the commissioners (*f*), by the royal command.

When the speech has been delivered the House of Lords is adjourned during pleasure. The Commons retire from the bar and, returning to their own House, pass through it, the mace being placed upon the table by the Serjeant, and the House reassembles at three o'clock.

#### REPORT OF KING'S SPEECH

When the Houses are resumed in the afternoon, the main business is for the Lord Chancellor in the Lords, and the Speaker in the Commons, to

(*d*) There are also precedents, followed for many years by Queen Victoria and throughout his reign by George I, for the speech to be read by the Lord Chancellor in the presence and under the personal direction of the Sovereign. See, *e.g.*, L. J. (1509-77) 3; *ibid.* 84, 164; *ibid.* (1578-1614) 357; *ibid.* (1620-28) 435, 470, 637; *ibid.* (1714-18) 22, etc.

(*e*) On 19 May 1880, attention being drawn to the inadvertent use by the usher of the Black Rod of the word "require," the proper form was explained from the chair, Parl. Deb. (1880) 251, c. 1221.

(*f*) L. J. (1865) 639; *ibid.* (1935-36) 378. At the prorogation, 10 August 1872, the Lord Chancellor's sight being impaired, the speech was read by Earl Granville, *ibid.* (1872-73) 753.

report the King's speech. In the former House, the speech is read by the Lord Chancellor, and in the latter by the Speaker, who states that, for greater accuracy, he has obtained a copy.

#### BUSINESS TAKEN BEFORE CONSIDERATION OF KING'S SPEECH

**Bill read *pro forma*.**—Before the King's speech is reported, it is the practice, in both Houses, to read some bill the first time *pro forma*, in order to assert their right of deliberating without reference to the immediate cause of summons. This practice, in the Lords, is enjoined by S.O. No. II. In the Commons the same form is observed pursuant to ancient custom.

**Sessional orders, etc.**—In the Commons other business is constantly entered upon before the report of the King's speech by the Speaker, such as the issue of new writs, the consideration of matters of privilege (*g*), the presentation of papers, the usual sessional orders and resolutions relating to elections (see pp. 183-4) and witnesses (see p. 129), and the order to the Commissioner of Police (which is also made by the House of Lords) to keep free the passages through the streets leading to the Houses of Parliament (see p. 224). No petitions are presented; though questions may be asked of the Ministers, generally relating to the business of the House, to urgent matters in foreign affairs, or recent action taken by the Government (*h*).

#### ADDRESS IN REPLY TO KING'S SPEECH

When the royal speech has been read, an address in answer thereto is moved in both Houses. Two Members in each House are selected by the administration for moving and seconding the address; and they appear in their places in levée dress, for that purpose. The form of the address used to be an answer, paragraph by paragraph, to the speech. In both Lords and Commons, since the commencement of session 1890-91, the answer to the royal speech has been moved in the form of a single resolution, expressing their thanks to the sovereign for the most gracious speech addressed to both Houses of Parliament, and amendments to the address are moved by way of addition thereto.

Since 1861, the appointment of a committee to prepare the address has been discontinued in the House of Lords. The committee formerly appointed in the Commons, to "draw up" an address, has been discontinued since February 1888, as the address is moved in a form suitable for presentation (C. J. (1890-91) 7). The addresses in sessions 1892 and 1896, both in Lords and Commons, contained expressions of condolence on the deaths of H.R.H. the Duke of Clarence and H.R.H. Prince Henry Maurice of Battenberg

(*g*) C. J. (1840) 4; Mr. T. M. Healey's imprisonment, *ibid.* (1883) 4; the letter termed "the forged letter" (Mr. Parnell), *ibid.* (1890) 7; the action of the returning officer at the Leicester election, Parl. Deb. (1895) 30, c. 54; the interference of a peer in an election, *ibid.* (1905) 141, c. 71. In session 1890 a motion relating to privilege was not disposed of until the hour for the interruption of business, and the Speaker was, accordingly, unable to report Her Majesty's speech until the next day, *ibid.* (1890) 7, 9. See also proceedings on the opening of the session in 1763, relative to the reading of the bill before the consideration of the question of privilege arising out of the *North Briton*, No. 45, Parl. Hist. (1753-63) 15, c. 1354.

(*h*) Parl. Deb. (1884) 284, c. 39; *ibid.* (1884-85) 293, cc 57, 58; *ibid.* (1890) 341, c. 41.

(L. J. (1892) 7; C. J. (1892) 10; L. J. (1896) 16; C. J. (1896) 12). In session 1921 (II), the King's Speech was confined to the Articles of Agreement signed by Ministers and the Irish Delegation, and the Address of each House declared its readiness to confirm and ratify these Articles (L. J. (1921) 463, 470; C. J. (1921) 405, 406). In 1812, the address was moved as an amendment to a question for an address proposed by Sir F. Burdett (Parl. Deb. (1812) 21, c. 18, 34). In 1894, an amendment to the address having been carried, the address, as amended, was negatived, and another address was proposed by the leader of the House and agreed to (C. J. (1894) 9, 11). In 1924, an amendment to the Address having been carried, the Address, as amended, was then agreed to. (C. J. (1924) 32.)

The transaction of public business is carried on whilst the proceedings on the address are in progress, bills being introduced and committees appointed.

If the debate on the address continues into the second week after the opening of Parliament it may be interrupted on the Wednesday of that week by private Members' motions (*i*).

In session 1884, debate on the address was postponed from day to day, whilst a motion of censure on the Government, regarding events in the Soudan, was under consideration (*k*), and in session 1922 (II) and 1924-25 for the consideration of bills presented by the Government and certain financial resolutions (*l*). See also C. J. (1928) 12.

**Presentation of address.**—After the address has been agreed to, it is ordered to be presented to his Majesty, either by the whole House: or in the case of the address of the upper House "by the lords with white staves" (*m*); and in the case of the address of the Commons by "such members of the House as are of his Majesty's most honourable privy council, or of his Majesty's household" (*n*). (See p. 788.)

**His Majesty's answer.**—His Majesty's answer to the address of each House is usually of a formal character, but the inclusion of unusual matter in the address has in the past occasioned variation from the ordinary form of reply. Thus Queen Victoria's answer to the address, 10 June 1859, which contained the paragraph, added by way of amendment, affirming that her Majesty's then present advisers did not possess the confidence of the House of Commons, stated that her Majesty had thereupon taken measures for the formation of a new administration (*o*). On 11 August 1892, when a paragraph similar in form was added to the address, the usual order was made for the presentation of the address; but no answer from her Majesty was presented to the House. On 26 January 1886, and 21 January 1924, when an amendment which occasioned a change of administration was added to the address, the sovereign's answer was of a wholly formal character (*p*). The procedure upon the reception

(*i*) C. J. (1936-37) 15-17.

(*k*) C. J. (1884) 46-64.

(*l*) C. J. (1922) 354, 355, 357, 358; *ibid.* (1924-25) 27, 34.

(*m*) Of the royal household.

(*n*) The members of the household were first added to the Members ordered to present the address in the year 1899, C. J. (1899) 54.

(*o*) C. J. (1859) 219.

(*p*) C. J. (1886) 57; *ibid.* (1924) 32

of the sovereign's answer to an address by Parliament is described more fully on p. 790.

## PROCEEDINGS ON PROROGATION OF PARLIAMENT

Before explaining the general arrangement of business during the course of the session in each House of Parliament it will be convenient to give a description of the forms observed on the prorogation of Parliament at the close of a session.

### BY HIS MAJESTY IN PERSON

If his Majesty attends in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament (*q*): the attendance of the Commons in the House of Peers is commanded; and, on their arrival at the bar, the Speaker addresses his Majesty, on presenting the supply bills, and adverts to the most important measures that have received the sanction of Parliament during the session (*r*). The royal assent is then given to the bills which are awaiting that sanction, and his Majesty's speech is read to both Houses of Parliament by himself or by his Chancellor (see p. 274, n. (*d*)); after which the Lord Chancellor, having received directions from his Majesty for that purpose, addresses both Houses in this manner: "My Lords and Members of the House of Commons, it is his Majesty's royal will and pleasure that this Parliament be prorogued to (a certain day) to be then here holden; and this Parliament is accordingly prorogued," etc.

### BY COMMISSION

When (as is now invariably the case) his Majesty is not present at the end of the session, Parliament is prorogued by a commission under the great seal, directed to certain Peers, who, by virtue of their commission, prorogue the Parliament. The attendance of the Commons is desired in the House of Peers; and, on their coming, with their Speaker, the Lord Chancellor states to both Houses that his Majesty, not thinking fit to be personally present, has caused a commission to be issued under the great seal, for giving the royal assent to bills. The commission is then read, and, if there are any supply bills, the Speaker, without any speech, delivers them to the Clerk of the Parliaments, who comes to the bar to receive them. The royal assent is signified to the bills in the usual manner; after which the Lord Chancellor, in pursuance of his Majesty's commands, reads the royal speech to both Houses (*s*). The commission for proroguing the Parliament is next read by the Clerk; and the Lord Chancellor, by virtue of that commission, prorogues the Parliament accordingly.

(*q*) The last occasion, 12 August 1854, L. J. (1854) 521; C. J. (1854) 503; Parl. Deb. (1854) 135, c. 1549.

(*r*) See debate in 1814, on Mr. Speaker Abbot's speech, referring to a bill which had not received the assent of the House, C. J. (1813-14) 203; Parl. Deb. (1814) 27, c. 466, Colchester, ii. 453-59, 483-96.

(*s*) For cases of prorogation without a King's speech, see L. J. (1783-87) 383; *ibid.* (1820) 764; 1 Creevey Papers, 341; 2 *ibid.* 5.

## CHAPTER XIV

### ARRANGEMENT OF SESSIONAL BUSINESS

#### LESS NEED FOR THE CONTROL OF TIME IN THE LORDS THAN IN THE COMMONS

The purpose of this chapter is to survey what may be called the "organization" of a session—the arrangements under which time is allotted to the various kinds of business and the amount of time, varying with different periods of the session, which is normally allotted to each kind.

For this purpose it will be necessary to state in detail only the rules governing the control of the time of the House of Commons. The rules which apply in the *House of Lords* can be generally stated. The transaction of business in the House of Lords is usually so arranged as not to necessitate the appropriation of any specific portion of time by the Government. Items of business are taken each day in the order in which they are entered for consideration, and no distinction is made between government business and other business. On Tuesday and Thursday public bills have precedence of other notices (S.O. No. XXI). But the Lords retain a considerable degree of flexibility in the arrangement of business, and when occasion arises suspend the standing order. Particularly, at the end of the session, when congestion of government business usually becomes formidable, measures are taken to give precedence to government bills over other bills and business.

In the case of the *House of Commons*, as a result of a long process of regulation by standing orders and in consequence of ever-increasing business, the rules by which the time of the House is controlled have become somewhat complex. In the following pages an account will first be given of the standing orders dealing with the time of the House. These, it will be seen, make the Government masters of the whole time of the House with minor exceptions mainly in favour of private Members. But it will be found on examination that the control of time by the Government is in some respects more nominal than real; and an explanation will be given of the practices and conventions which, in varying degrees of urgency, lead or compel the Government to provide opportunities during the time which is under their control for the transaction of business which is more properly that of private Members, or of the Opposition. A consideration of the classification of the business of the House in relation to the time of the session, to which this will lead, will make it possible to estimate the opportunities which the several claimants for time—private Members, the Opposition, and the Government—find for their business in the course of the session. Next a word must be

said about the periods into which the session naturally falls, and how the business which is peculiar to each of these periods affects the progress of business generally and especially that of the Government programme. As this will show the disproportion which generally develops in the course of a session between the amount of business and the time available for doing it, a brief reference will be made to the methods, with which no Government can altogether dispense, for the purpose of increasing the time at its disposal.

### ESTIMATE OF AVAILABLE PARLIAMENTARY TIME

The average number of days on which the House sits (exclusive of sittings for formal business) calculated for the period since 1919 amounts to 143 days in a session. A normal session is divided by adjournments of the House into periods, each (as explained below, pp. 294-5) with characteristic business of its own. The House normally sits during every month of the year except January, August and September. A session used to begin after Christmas. Recently the alternative plan has been adopted of beginning it at the end of October. Very considerable differences in the arrangement of parliamentary time and business are (as will be explained on p. 296) consequent upon the adoption of this alternative plan.

The days on which the House normally sits are Monday, Tuesday, Wednesday, Thursday, and Friday, seldom Saturday, and only in cases of extreme urgency Sunday (see below, p. 301). On the first four "sitting days" of the week the House meets in the afternoon at a quarter to three and adjourns between eleven and half past eleven, unless the "eleven o'clock rule" (see pp. 303, 360) has been suspended. As, on these four days, the first hour of the sitting is normally occupied by questions to Ministers (see p. 332), and minor items of business, the time devoted on each of these days to the programme of sessional business—"public business," as it is called—amounts to little more than seven hours. A sitting on one of these days may be, and often is, prolonged by the suspension of the eleven o'clock rule. The average increase of sessional time secured by this means is calculated on p. 332.

On Friday the House meets in the morning at eleven o'clock and normally adjourns soon after four. Public business begins as a rule immediately after Prayers, as questions are seldom addressed to Ministers, who are under no obligation to answer them on Friday, and most of the other minor items of business which require any time are out of order on this day. The length of a Friday sitting is thus little less than five hours. It may be, but very rarely is, increased by a suspension of the "four o'clock rule." For the purpose of the calculations made below of the distribution of sessional time Friday is reckoned as a full day. It might have been treated as a half-day (a), but, apart from the fact that (as a simple calculation will show) this is even less accurate than treating it as a full day, experience proves that the House is often capable of dispatching

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(a) It is so treated for the purpose of allotting days to the business of supply by S.O. No. 14 (10).

as much business in the five hours of a Friday sitting as in the seven hours of one of the other sitting days.

### THE CONTROL OF THE TIME OF THE SESSION

In principle the control of the time of the House rests with the House itself, but in practice the House has by standing order delegated this control, with a saving for private members' business and a few minor reservations, to the Government. Certain standing orders (to be specified later) provide that on days on which government business has precedence the Government can arrange their business, whether orders of the day or notices of motions, in any order they please, and secure priority for it over any other business, except certain carefully defined business mostly of an urgent character, which under standing order or practice is given priority whenever it is brought forward. Thus the Government is given a control over the time of the House which is very far-reaching; and even the time which is allotted to other business can, when need arises, be transferred to the Government by a vote of the House suspending the relevant standing order or making a special order for the purpose.

This control is the result of a process, extending over the last century, whereby an ever-increasing proportion of the time of the session has been appropriated to the Government. This process has rendered obsolete the older division of time between "notice" days and "order" days (*i.e.* days on which new business and business in progress, respectively, had priority) so far as government business is concerned, though, as is explained below, the older rule still applies to private members' business.

It may be repeated here that the business, the classification of which, and the time, the allotment of which, is dealt with in this chapter, are what is called "public business" and "public business time." That is to say, the business and time of what generally amounts to the first hour of a sitting is excluded from consideration, as it is proceeded with according to a uniform routine and does not affect the arrangement of business over the session as a whole. This business, excluded here, with all its varieties and subdivisions, forms the subject of a subsequent chapter (Chapter XVI).

#### STANDING ORDERS REGULATING THE DISTRIBUTION OF TIME

The standing orders which regulate the time of the session are, with their objects briefly set out, as follows:—

S.O. No. 2 gives precedence to orders of the day (*i.e.* in this case, bills) over notices of motions on Friday. In view of the provisions of S.O. No. 12, this rule now only applies to days on which private members' business has precedence (p. 281).

S.O. No. 3 gives precedence to government business on all days except certain days in the early period of the session which are thereby reserved for private members' business; also on Wednesdays which are thus reserved it gives precedence to notices of motions over orders of the day (p. 281).

S.O. No. 4 arranges for the precedence *inter se* of private members' bills in their later stages (p. 283).

S.O. No. 6 (4) gives precedence to opposed private business on any day on which it is set down by direction of the Chairman of Ways and Means (p. 329).

S.O. No. 8 gives precedence under certain conditions to any motion for the adjournment of the House for the purpose of discussing a definite matter of urgent public importance.

S.O. No. 12 empowers the Government, subject to the rights of private members' business, to arrange their own business, whether orders of the day or notices of motions, in such order as they think fit.

S.O. No. 14 allots twenty days before 5 August (with a possible addition of three days) to the consideration of the annual estimates and provides for their being voted, with or without consideration, on the last two of these allotted days.

S.O. No. 16 provides an opportunity for raising grievances on first going into Committee of Supply on each of the four main branches of estimates, and excludes the days when such business is taken from the twenty days allotted to supply under S.O. No. 14.

### PRIVATE MEMBERS' TIME

The provision of time for private members' business differs somewhat according to whether the session begins (1) after Christmas, or (2) (as has recently been the regular practice) before Christmas.

#### DURING SESSIONS WHICH BEGIN AFTER CHRISTMAS

Under S.O. No. 3 (1) (a) and (b) the business of private Members during sessions which begin after Christmas is given precedence in the following terms :

" Unless the House otherwise direct—

- (a) Until Easter government business shall have precedence at every sitting except the sitting on Wednesday and the sitting on Friday ; and at the sitting on Wednesday notices of motions and public bills, other than government bills, shall have precedence of government business, and notices of motions shall have precedence of the orders of the day ;
- (b) After Easter government business shall have precedence at all sittings, except the sittings on the first, second, third, and fourth Fridays after Easter Day and the sittings on the third, fourth, fifth, and sixth Fridays after Whit Sunday."

The effect of this on the arrangement of sessional business is that after the first week (the whole time of which is normally secured for the Government by a special order), (i) private members' *motions* have precedence on Wednesday up to and including the Wednesday before Easter (the House normally adjourns for the Easter holiday on the Thursday before Easter) ; (ii) private members' *bills* have precedence on Friday up to the Friday before Good Friday, and on the first, second, third, and fourth Fridays after Easter Day (the first of which Fridays is ineffective as it normally falls during the Easter adjournment of the House). This is for the second readings of bills. For their later stages the third, fourth, fifth, and sixth



Fridays after Whit Sunday are reserved in pursuance of S.O. No. 4, which provides that after Whitsuntide private members' bills are taken in an order which gives priority to the more advanced over the less advanced bills.

The effect of S.O. No. 4 is, as a rule, to allow each of the four private members' bills which are first reported from committee to be placed on the Order Book for one of these Fridays after Whit Sunday (all of which are, normally, effective days). A difficulty of interpretation arises when the consideration of such a bill by the House is not completed and it is adjourned to a later private members' Friday. In that event it appears to be provided by S.O. No. 4 that the adjourned bill loses precedence altogether. But it has been ruled that such a bill has priority over any bill waiting to be read a second time, although it does not take precedence over any bill reported from committee and standing in the Order Book for the same Friday *to which the adjourned bill is adjourned*.

The reason why private members' Fridays are devoted to bills rather than to motions is that under S.O. No. 2 orders of the day have precedence over notices of motions on Friday.

#### DURING SESSIONS WHICH BEGIN BEFORE CHRISTMAS

The above provisions regulating private members' time apply only to sessions which begin after Christmas. If a session begins before Christmas these provisions are modified so as to deduct from private members' time immediately before Easter a number of days equivalent to those which were at their disposal before Christmas. The latter part of S.O. No. 3 provides as follows :

"In the case of a session beginning between Easter and Christmas the following modifications of paragraph (1) of this standing order shall have effect :—

- (a) Government business shall have precedence on as many Wednesdays immediately before Good Friday as the number of Wednesdays before Christmas on which it has not had precedence, and on as many Fridays immediately before Good Friday as the number of Fridays (reduced by three) on which it had not precedence before Christmas ;
- (b) After Easter government business shall have precedence at all sittings except the sittings on the second, third, fourth, and fifth Fridays after Easter Day ;
- (c) S.O. No. 4 shall come into force and have effect after Easter, instead of after Whitsuntide."

A session beginning before Christmas usually begins at the end of October or beginning of November. Accordingly, if during five weeks before Christmas private members' business has had the precedence allotted by the standing order, then (a) government business will have precedence over private members' motions on the five Wednesdays immediately before Good Friday, but (b) government business will only have precedence over private members' bills (second readings) on the two Fridays immediately before Good Friday (taking into account the three Fridays which will be lost to private Members after Easter for the second readings of their bills).

Finally, S.O. No. 4 comes into operation after Easter instead of after

Whitsuntide, and under S.O. No. 3 (2) (b) four normally effective Fridays after Easter are allotted to the later stages of private members' bills instead of after Whitsuntide.

In the case of a session beginning before Christmas the arrangements for allotting time to private members' business have the advantage of a certain elasticity. Any number of private members' days which it is found necessary (as may be the case in the first few weeks of the session) to appropriate for government business before Christmas are under the standing order automatically restored to private members between Christmas and Easter. This elasticity is lacking in the case of a session beginning after Christmas.

Precedence *inter se* of private members' bills and motions is allotted by the method of the ballot, the procedure in holding which is explained among the items of business of a sitting described in Chapter XVI (see p. 350).

### GOVERNMENT TIME

Apart from the provision made for private members' business the standing orders, as already stated, allot the rest of the time of the session to government business, and, with a few exceptions mentioned later, allow the Government to distribute their business between these days in any way they think fit.

Under S.O. No. 12 when government business has precedence, the orders of the day and notices of motions of the Government are placed, in such sequence as the Government may think fit, before other business set down upon the notice paper.

This general power of the Government has, as stated above, in the course of time displaced the old arrangement which allotted precedence on certain days of the week to notices of motions and on other days to orders of the day, and overrides the provision of S.O. No. 2 (which still applies to private members' business) whereby orders of the day have precedence of notices of motions on Friday.

### MANNER OF NOTIFYING WEEKLY PROGRAMME OF GOVERNMENT BUSINESS

Government orders of the day are marked in the Notice Paper with a star to distinguish them from those of private Members. An Order Book showing the orders standing for future days is brought out daily and a copy showing the state of the Order Book at the end of each week is circulated to Members (see p. 250). For the purpose of informing the House what items of government business (and in what order of precedence) it is intended to take on government days a statement is made every Thursday by the leader of the House in reply to a question of the leader of the Opposition which covers the whole of the following week. The order of business thus notified is never varied without a supplementary statement from the leader of the House elicited as a rule in the same manner.

### RESTRICTIONS UPON THE GOVERNMENT'S CONTROL OF TIME

From what has been said above it appears that the control of their own time given to the Government by the standing orders, especially Nos. 3

and 12, is fairly complete. S.O. No. 3 makes nearly every day, except during a short period of the session, a government day. S.O. No. 12 gives the Government a free hand as to the use of government days. It is only when distinctions are drawn in the business which the Government has to sponsor and put down on its own days that it becomes apparent that the monopoly of time by the Government is in some respects more nominal than real. For a good deal of what is nominally government time is devoted to matters of routine, which are designed to give opportunities for criticism, and is regulated by long-standing practice and by conventions which give the initiative to the Opposition. In what follows an attempt is made to set out not only the formal rules, based upon practice and the standing orders, by which the arrangement of business is regulated, but also the understandings and conventions by which these rules are supplemented.

#### INCIDENTAL BUSINESS

In estimating the restrictions upon the free disposal by the Government of the time reserved to it by S.O. No. 3, account must be taken first of certain items of business, of a comparatively minor character, which under various standing orders, or under the practice of the House, may be taken in government time, or for which the Government may find itself virtually obliged to provide time as a result of established conventions or even for reasons of policy. The items forming this group generally have the common characteristic of some degree of urgency. They are tabulated on p. 326, and the rules and practices which cause them to be taken in government time must now be dealt with.

The first two items of this group are given precedence under the standing orders, and may fall, when they occur, either in government time or in private members' time.

(1) **Opposed private business.**—Under S.O. No. 6 (4) private business, when persistently opposed, is taken by direction of the Chairman of Ways and Means at half-past seven (or as soon thereafter as any motion for the adjournment of the House under S.O. No. 8 has been disposed of), and any business under consideration is interrupted for that purpose.

The details of this procedure are a matter for the next chapter (see p. 329). Here it is sufficient to say that this entrenchment upon the time of public business by a matter which is normally excluded from it, may represent an appreciable loss of time to the Government, although the standing order directs that such business "shall be distributed as near as may be proportionately between the sittings on which government business has precedence and the other sittings."

(2) **Motions for the adjournment under S.O. No. 8.**—This item of business is more important in principle, as it represents the only method which the standing orders provide whereby room may be found in the pre-arranged programme of a sitting for debating a matter of sudden emergency.

Under S.O. No. 8 motions to adjourn the House "for the purpose of discussing a definite matter of urgent public importance" are, if they satisfy certain prescribed conditions, given precedence at half-past seven

on any sitting day except Friday, and allowed to interrupt any business then under consideration.

The procedure on such motions is explained in Chapter XVI which deals with the various items which form part of the business of a sitting (see p. 343). In relation to the distribution of time during the session it is only necessary to say that such motions are by their very nature moved only by unofficial Members, and further almost invariably by Members belonging to parties in opposition to the Government. They are often moved on behalf of an Opposition by one of its leaders.

(3) **Complaint of breach of privilege.**—Under the practice of the House any matter of privilege has precedence over other business. This is a rule which affects the arrangement of business during a sitting rather than the allotment of the time of the session, as business of this nature usually occasions little or no discussion. Accordingly the items comprised under this head are dealt with in a later chapter (pp. 354–57). One of these items, however, a motion complaining of a breach of privilege, may occupy sufficient time to disorganize the programme of business over which it takes precedence, and thus cause the loss of a day or half a day to the government programme.

(4) **Votes of censure.**—By established convention the Government never fail to accede to a demand from the leader of the Opposition to allot a day for the discussion of a motion expressing lack of confidence in the Government—a “vote of censure” as it is called. In allotting a day for this purpose the Government are entitled to have regard to the exigencies of their own business, but a reasonably early day is invariably found. Few sessions fail to provide examples of such motions.

This convention is due to the recognized and responsible position of the leaders of the Opposition as a potential alternative Government—a position which guarantees the seriousness of such an interruption of the normal course of business. For their part, the Government have everything to gain by meeting such a direct challenge to their authority at the earliest possible moment.

(5) **Private members' motions in government time.**—In a minor degree, but still often unavoidably, the Government in most sessions find themselves bound to provide time for the discussion of subjects, for raising which a sufficient volume of demand is forthcoming from Members, whether supporters or opponents of the Government. Such matters are generally brought forward by substantive motions, moved by private Members and granted precedence by the Government, if an expression of opinion by means of a vote of the House is required.

(6) **Adjournment motions in government time.**—If no expression of opinion by the House is required, or if for some reason it is not desired to formulate a motion in express terms, a matter for which time is granted may be discussed on a motion for the adjournment of the House, which is moved either before or between the orders of the day, and which accordingly can only be moved by a Minister (see p. 343). Such motions for the adjournment are also moved by the Government at the instance of the Opposition, when it is not desired to challenge the authority of the Government but only to ventilate a subject without recording a decision of the House, and also occasionally when the Opposition wish to raise a

matter of administrative policy which involves more than one department or issues too wide to be covered by a vote or group of kindred votes in supply (b). In such cases the Government secure, as from the nature of the debate they are entitled to do, that the day given to such a motion shall count formally as one of the days allotted to supply (see p. 686).

(7) “Prayers.”—The last item of this group consists of motions for the disallowance of statutory orders or regulations—a class of business which is rapidly growing in importance as it provides the most usual method by which Parliament exercises the degree of control which remains to it over the output of delegated legislation (see p. 805). These motions are usually in the form of addresses to the Crown praying for the annulment of orders or regulations and are hence commonly called “Prayers.” As a “Prayer” is moved in pursuance of the statute which authorizes the issue of the order or regulation objected to, it ranks as “exempted business” under S.O. No. 1 (6) (see pp. 303, 367), and hence is commonly moved after 11 o’clock and does not interfere with the programme of daily business. But in the case of exceptionally controversial orders or regulations, the Government may find it necessary to set apart some of their own time for debating motions of disallowance (c).

#### ROUTINE AND FINANCIAL BUSINESS

In addition to the group of business just described, which consists of items which are clearly not government business, but which for one reason or another may be taken in government time, there is a more important group, occupying a far larger proportion of time, which, though nominally government business, exists primarily for the purpose of providing opportunities for the criticism of government policy, and in respect of which by practice or convention the initiative in the choice of subjects of criticism is left to the Opposition or to private Members. Most of these items are founded upon formal motions which provide wide scope for the choice of the subject of debate.

This group is made up of the following items :

(1) By the practice of the House the Address in reply to the King’s speech at the opening of the session is moved on the first day and generally takes precedence of other business until it is agreed to. Occasionally the debate on the Address is postponed in favour of an urgent government bill (d), and it may be interrupted in the course of a sitting by an adjournment motion under S.O. No. 8. If it is not concluded by the second Wednesday in the session it loses precedence on that day to private members’ motions.

The debate on the Address falls into two parts. The first is used for a review of government policy especially in relation to the contents of the King’s speech. The second consists of a series of amendments, generally

(b) C. J. (1927) 107; *ibid.* (1936–37) 402; see also *ibid.* (1939–40) 133. It is inconvenient to employ this form when it is desired to record opposition to government policy, as it may result in supporters of the Government voting against, and the Opposition voting for, a motion moved by a Minister, as in the first case referred to in this note.

(c) In session 1936–37 one half-day was allotted by the Government to such a motion, C. J. (1936–37) 280; Parl. Deb. (1937) 324, c. 1279–1308.

(d) C. J. (1922) 354, 355, 357; *ibid.* (1924–25) 27, 34.

regretting omissions from the King's speech, which are usually moved by leaders of the Opposition and occasionally by back-benchers. Thus the first part of the debate is wide enough to cover the whole field of government policy, and in the second part practice concedes the initiative to the Opposition.

(2) The long-standing practice of the House has turned the motions for the holiday adjournments, of which there are at least three in a normal session, into whole day debates on "grievances." Any matter of government policy can be raised which does not involve legislation, and this opportunity of criticizing the administration is regularly used by leaders of the Opposition and by private Members.

(3) The main estimates.—S.O. No. 14 (1) requires that twenty days (which may be increased to twenty-three) shall be allotted before the 5th of August each session to the consideration of the annual estimates in supply (see p. 686) and that on any allotted day the business of supply shall stand as the first order of the day. Paragraph (4) of the same standing order provides that on such a day no business, other than the business of supply and the reports of the committees of public accounts and of estimates, shall be taken before eleven, and also that no business of supply shall be taken after eleven.

The effect of this standing order is to provide that the twenty days allotted to supply shall be full days of normal length. It limits the discretion, given to the Government by S.O. No. 12, to arrange the order of business on a government day, and to this extent draws a distinction between supply and other government business. So also does para. (2) of S.O. No. 14 which, among other things, provides that supplementary estimates for new services shall not be taken on an allotted day. Such estimates, which are generally the result of recent government legislation, are too much of the nature of government business to be taken on a supply day. The obligation placed on the Government to fit in these twenty days (all but two or three which are taken earlier) into the period between the Easter adjournment and 5 August has an important effect on the arrangement of Government business over the session.

These effects of S.O. No. 14 are insignificant compared with the result which the provisions of paras. (6) and (7) of the standing order (which provide by means of a system of closure for the passing of all the votes of supply upon the last two of the allotted days) have had in transferring the initiative in the criticism of administrative policy to the Opposition. It is unnecessary here to describe the process (which has been in operation for a long period) whereby the consideration of votes in Committee of Supply has lost its literal and acquired a symbolic meaning—in other words has ceased to be a consideration of the financial reasons for the Crown's demands and become an occasion for criticizing administrative policy. Perhaps the most important factor in the process is that government responsibility for the estimates has long been taken to cover every detail of every vote, so that the reduction by £100 of an estimate would be regarded as a major defeat probably involving the resignation of the Government (e). As the House as a whole cannot, therefore, collaborate in fixing the sums contained in the estimates, it has long ceased to consider their financial aspect and concentrates upon the policy and activities of the ministers and officials whose salaries are provided in them.

(e) In 1895 Lord Rosebery resigned after an amendment proposing such a reduction had been agreed to in Committee of Supply, C. J. (1895) 297.

This had already long been the case when the system was established of allotting twenty days to the estimates with a comprehensive closure on the last two days. The result of this innovation was that it freed the Government of the need to give priority to any particular estimate, and made them indifferent as to the vote to be discussed on any allotted day, as they were certain of securing the passage of all votes, with or without discussion, at the end of the twenty allotted days. In return for this certainty an arrangement was made whereby the Opposition were given the right to select the votes to be put down for discussion on each allotted day, and whereby they also secured that the allotted days should fall at more or less regular intervals during the period between the beginning of the financial year and 5 August.

The practical result of this arrangement is that the Opposition have the right on any day which the Government allot to supply to choose for discussion any one (not already voted) of nearly two hundred votes, covering all branches of administrative expenditure, which comprise the estimates. Having discussed one of a group of votes on a particular day they are not precluded from discussing the same vote on any subsequent allotted day (provided they have taken the precaution of "keeping it open" by continuing discussion upon it until eleven o'clock) (*f*); and they do in fact frequently recur to the same votes when they regard the policy of the department connected with them as particularly open to criticism. In fact, it may be said that under this system the Opposition have the same right to debate subjects of their own choice, provided they refer to administrative matters, as they would have if they enjoyed the right to put down motions of their own framing for discussion. By using a traditional form of proceeding in a novel way the practice of the House has secured that an appreciable portion of government time shall be used in reality for the purpose of criticizing the Government on subjects chosen by the Opposition, while in form it is used for determining the precise amount of every item of national expenditure.

(4) **Supplementary estimates.**—The consideration of supplementary estimates, which are normally presented and considered towards the end of the financial year, is not restricted by any system of closure similar to that which is applied to the main estimates. The Government are therefore bound to secure the voting of supplementary estimates on the days on which they are put down and cannot leave the choice of the votes to be discussed on any day to the Opposition. Consequently these estimates cannot be regarded as opposition business. On the other hand, it is fair to say that they are as much an outcome of a financial system which requires a distant forecast of annual expenditure as of anything which can be attributed to government policy.

(5) **Consolidated Fund Bills.**—There are two main Consolidated Fund Bills every session (the second of which becomes the Appropriation Act). As the field which they cover is commensurate with that of the main estimates, almost any matter of administrative policy can be raised on the second or third reading of these bills: and the choice of the subjects to be debated at these stages is, by a similar convention to that which applies to the main estimates, left to the Opposition.

(6) **The Finance Bill and the Ways and Means Resolutions** on which it is founded involve an annual outlay of government time which remains fairly constant every session. To what extent they may be

(*f*) See pp. 304, 687.

considered to represent government policy is difficult to say, as this may vary from year to year. But the Ways and Means Resolutions, largely, and the Finance Bill to some extent, offering as they do a review of the whole field of national finance, afford examples of those very general debates in which the choice of subject is outside the control of the Government and depends upon the initiative of the Opposition. Though not specifically opposition business the Finance Bill cannot be placed in the category of the government programme (see p. 291).

(7) Finally there are certain annual routine measures such as the **Army and Air Force (Annual) Bill** and the **Expiring Laws Continuance Bill**, which have to be passed in government time, but offer a very wide choice of subjects for criticism, which is expressed by means of amendments moved at the committee stage.

It is worth noting that the bills falling within this group (which is primarily intended to provide opportunities for criticism) are never referred to a standing committee but always to a committee of the whole House (see also S.O. No. 46 (1)).

### AVERAGE NUMBER OF DAYS ALLOTTED TO EACH GROUP OF BUSINESS

The various classes of business, composing the business of the session, which have just been distinguished, may now be arranged in groups and tabulated together with the average amount of time devoted to each. For the purpose of this computation Friday is counted as a whole day.

**First group: Private members' business.**—This group of business is given a fixed proportion of sessional time under S.O. No. 3 (see p. 281) and the Government has no control over the time allotted to it except by suspending the operation of the standing order. The group consists of

(1) Private Members' Bills—for which on the average some 14 days of the session are available.

(2) Private Members' Motions—7 days.

The number of days available for private members' business varies in accordance with the respective dates on which the beginning of the session and Easter fall. The average of the number of days actually occupied by private Members is reduced, by the fact that in certain sessions they have been wholly or partially appropriated for government business (g), to 15 or 16.

**Second group: Incidental business.**—The miscellaneous items which compose this group are placed together, because they are all alike of casual and uncertain occurrence, and because the time allotted to them, when they occur, is in the case of the first three items beyond even the nominal control of the Government and in the case of the others, owing to

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(g) The whole of private members' time was appropriated for government business in sessions 1928-29, 1931-32, and 1934-35, and during the war years from 1939-45. In other sessions, e.g., 1935-36 and 1936-37, part of it was appropriated.



certain understandings and conventions explained above, beyond their real control.

- (1) Opposed Private Business (see p. 284).
- (2) Adjournment Motions under S.O. No. 8 (see p. 284).
- (3) Motions complaining of breach of privilege (see p. 285).
- (4) Opposition Motions of censure or similar character (see p. 285).
- (5) Private Members' motions granted precedence by the Government (see p. 285).
- (6) Adjournment Motions moved by the Government as a substitute for (4) or (5) (see p. 285).
- (7) Motions for the disallowance of statutory orders, etc. ("prayers") (see p. 286).

This Group, as a whole, occupies with surprising consistency about 8 days every session.

**Third group : Routine and financial business.**—The different classes of business of which this group is composed are alike in occurring with uniform regularity, in occupying much the same amount of time every session, and also in being used for the purpose of providing opportunities for initiating criticism of government policy. Some items of this class are brought before the House by motions which are either very general or else purely formal in character, and their real significance is within wide limits what the critics of the Government choose to give them. They are taken in what is nominally government time, but in respect of most of them the Government has, owing to their formal character or to certain conventions which have been explained, no control of the subject of discussion. This is true only to a limited extent in the case of two of these classes—the supplementary estimates and the Finance Bill.

(1) The Address in reply to the King's Speech at the opening of the session (see p. 275). This occupies on the average 6 days in each session.

(2) Motions for holiday Adjournments of the House (see p. 287), 3 or 4 days.

(3) Main Estimates (see p. 292), 24 days.

(4) Supplementary Estimates. The time occupied by these varies considerably and has been falling during the last decade from 9 or 10 days to 3 or 4 in a session. This decline is probably temporary, and the average allowance for supplementary estimates may be placed at about 7 days.

(5) Consolidated Fund Bills (see p. 293), 4 days.

(6) Finance Bill together with the Ways and Means Resolutions on which it is based. This provides (in its early stages) an opportunity for the review of the national finances and occupies much the same amount of time every session—12 days.

(7) Certain routine measures such as the Army and Air Force (Annual) Bill and the Expiring Laws Continuance Bill. These generally require a day between them in the course of the session.

The total average amount of time devoted to this group is 57 days.

**Fourth Group : The Government "Programme."**—This may be classified into

- (1) Government Bills.
- (2) Government Motions.
- (3) Motions approving statutory orders, etc. (see p. 286).

Far the greater portion of the government programme consists of bills. Government motions are rare but may be occasioned by the need for securing the approval of the House to such matters as a treaty or the report of a committee. Motions for approving financial resolutions in connexion with bills may be treated as forming part of the procedure on bills. Motions for approving orders, etc., made by departments under powers delegated by statute, may be treated as forming part of the government's programme, but as they are usually taken after 11 o'clock, they do not appreciably reduce the amount of time at the disposal of the Government.

The time occupied by this group of business, which is all that the Government can employ for its own purposes, is the time that remains after the claims of the other groups have been satisfied. The total number of days occupied by the first three groups is on an average 80. If the average length of the session is placed at 149 days, the average amount of time left for the government programme amounts to about 69 days or less than one-half of the session (*h*).

#### DISTRIBUTION OF TIME BETWEEN PRIVATE MEMBERS, OPPOSITION, AND GOVERNMENT

The joint effect of the practice of the House and of the standing orders upon the distribution of time between the four groups, into which the business of the session may be analysed, has been stated earlier (pp. 280-9). This must now be supplemented by an attempt to show how sessional time is divided between the several claimants for time—private Members, Opposition, and Government. The best method of making this attempt will be to divide sessional time into these three categories, and see what groups of business or, failing that, classes of business within the groups, are properly allotted to each of them. In this classification not much help will be obtained by relying upon a literal interpretation of the practice and standing orders of the House, and account will have to be taken of the manner in which these are modified by comparatively recent understandings and conventions. In deciding to which category any class of business belongs the question to be answered is, who really initiates the subject of discussion—an individual private Member, the Opposition as an organized party, or the Government. Reasons have been given earlier (see p. 286) explaining how it is that in the case of those forms of business which are intended primarily for the function of criticism, when the Government puts down an item of business on the order paper, it has no voice in deciding the subject to be raised upon the order.

#### PRIVATE MEMBERS' TIME

Private Members' business comprises the first group of business (see p. 281) and their time primarily consists of the days allotted for this busi-

(*h*) The amount of time occupied by government business varies greatly from session to session. It has fallen as low as 29 days (in 1923) and risen to 88½ days (in 1934-35).

ness by S.O. No. 3, *i.e.* certain Wednesdays for motions and certain Fridays for bills, amounting in all to an average of twenty-one days during a session in which their rights are not curtailed (see p. 298). But they also enjoy a share of the time allotted to the second and third groups of business. It is generally at the instance of a private Member that time has to be found under S.Os. No. 6 and No. 8 respectively for the consideration of an opposed private bill or a motion for the adjournment of the House. Sometimes they secure time from the Government—even a Government of which they are supporters—for the discussion of a motion, sometimes for an address praying for the disallowance of a statutory order. Sometimes they claim precedence over government business for the purpose of complaining of a breach of privilege. They draft and move the amendments debated on going into committee of supply on the four main branches of the estimates, and have a share in the time given to the periodical motions for adjournment before the holidays, and to the consideration of supplementary estimates and of Consolidated Fund Bills. And they often decide the subjects to be raised on comprehensive routine measures such as the Army and Air Force (Annual) Bill and the Expiring Laws (Continuance) Bill.

The subjects of debate which really originate from private Members are very difficult to determine strictly. It is impossible in many cases to say whether a private Member in moving a bill or a motion, still less in the other proceedings mentioned above, is acting as an individual, or as a member of a group which is not primarily or not at all political, or in his party capacity on behalf of the Opposition or of the Government. Consequently, it is impossible to estimate accurately the amount of time which private Members as such control under these minor headings, but without scrutinizing it too deeply one may put it at an average of ten days. Thus the total average amount of private Members' time extends to about thirty-one days in a session, provided they enjoy undiminished the amount of time allotted under S.O. No. 3.

#### OPPOSITION TIME

Probably what has been said earlier is enough to make it clear that the control of time enjoyed by the Opposition is entirely indirect. As to the smaller part, they find their opportunities in private members' time; as to the larger in what is nominally government time. Indirectly, through the conventions mentioned above, they control the bulk of the time allotted to the third group of business—routine and financial business.

**Address in reply to the King's speech.**—The address is one of the formal motions referred to above which is so comprehensive in its contents, that it is not unfair to regard the power to move amendments to it as the power to initiate separate subjects of debate. On these grounds two at least of the six days normally given to the address may be reckoned as opposition time.

**Adjournments (holidays).**—The three or four days normally given to motions for such adjournments are controlled by the Opposition.

**Main estimates.**—For the reasons stated on p. 288 nearly all the allotted days are really opposition time. On the days given to motions

for going into supply on the four main branches of the estimates (which are not allotted days), the subjects of debate are not selected by the Opposition, but depend partly upon the speech of the Minister who presents the estimates and partly upon the motion which has secured precedence in the ballot (see p. 350). Consequently, though these days are equally devoted to criticism of administrative policy, they cannot be reckoned as opposition time.

**Consolidated Fund Bills.**—The Opposition can, and often do, control the subjects of debate on all the four days normally devoted to these bills.

**Supplementary estimates.**—None of the days spent on supplementary estimates can be reckoned as opposition time, for (as explained before) unlike the main estimates all supplementary votes have to be agreed to separately, and the Opposition have no power to decide which votes shall be put down, but only the choice, which is open to them in every kind of business, of which to discuss and which to let pass without discussion.

**Finance Bill.**—Procedure in dealing with the Finance Bill, and particularly the committee stage of the Ways and Means resolutions on which the bill is based, affords another example (offering as it does a review of the whole field of finance) of those very general debates in which the choice of subject is outside the control of the Government. This applies to a minor extent to the debates on the second reading and committee stages of the bill. It would not be an over-estimate to say that three of the twelve days spent on the Finance Bill are really controlled by the Opposition.

Taking these various items together, it may be estimated that thirty-two of the days given to the third group of business are opposition days.

Of the days spent on the **second group** of business some five days may be counted as opposition time. These days are made up as follows: Adjournment motions under S.O. No. 8, 1 day; motions censuring the Government, 2 days; motions for the adjournment of the House moved at the instance of the Opposition, 2 days.

In all, therefore, the Opposition controls some thirty-seven days of sessional time, and employs them for the purpose of criticizing the Government in respect of matters mainly of administrative policy selected at their own discretion. This is, of course, exclusive of the time occupied by them in criticizing the Government on matters, such as bills, submitted at the discretion of the Government.

#### GOVERNMENT TIME

It is clear, in view of what has already been said, that in order to calculate the amount of time available to the Government for what is strictly their own business serious deductions must be made from what is nominally government time. Apart from the 21 days on an average which are secured to private Members by S.O. No. 3, and the 10 other days on which, also on an average, private Members obtain, by standing order practice or convention, the initiative in raising debate, no less than

37 days of nominal Government time are similarly set apart for the criticism of the administration, and on these days the Opposition have a free hand in the choice of the subject to be discussed. Allowing 149 days for the length of the average session, about 81 days are left to the Government. But even this figure is subject to deduction if the amount of time available to the Government for its own programme of business is to be strictly determined. These deductions are chiefly in respect of supplementary estimates and the Finance Bill. Supplementary estimates are inevitable under any Government even without any new departure in policy, and as they come up for consideration at a period of the year (see p. 678) when the congestion of business offers opportunities for obstruction, the debate on them is liable to be disproportionately protracted. The Finance Bill may contain new policy, but it is mostly of a departmental character and, of the matters which it raises, few are in normal conditions closely connected with the government programme. After the necessary deductions in these respects have been made, the result agrees with the estimate previously reached (see p. 291) that the average amount of time which a government can count upon for their programme of legislation amounts to no more than 70 days, or less than one-half of the session.

### DISTINCTIVE PERIODS OF SESSION

An ordinary session of Parliament tends for various reasons to fall into three distinct and well-marked periods divided by adjournments, each characterized by a preponderance of certain kinds of business, and each with a more or less definite time limit which tends to produce a recurring crisis in the congestion of business. The factors which produce this subdivision of the session are mainly the old-established arrangements for dealing with financial business and to a lesser extent the method adopted for satisfying the claims of private members' business. The business arrangements for each of the three sessional periods vary considerably according to whether the session begins after Christmas or, as has been recently the custom, in the autumn. The differences arising from these alternative opening dates are noted below (pp. 295-6).

The session, the average length of which is some 149 effective days, is divided into the following periods :

- (1) From the meeting of the House after Christmas to the Easter adjournment (the winter period)—on an average 45 days.
- (2) From the resumption after Easter to the summer adjournment (the summer period)—an average of 70 days.
- (3) From the end of October or beginning of November to Christmas (the autumn period)—an average length of 34 days.

#### I. WINTER PERIOD

For the winter period of the session the governing date is 31 March, the end of the financial year. This necessitates the disposal of a considerable amount of financial business directed towards covering unforeseen expenditure during the current year and to providing for the financial requirements of the coming year. Such financial business includes supplementary estimates for the current year, the voting of a portion of

the estimates of the defence services and the vote on account of the civil estimates for the coming year, and the passing through its stages of at least one Consolidated Fund Bill. During this period also, or the greater part of it, two days a week are allotted to private members' business. Then, if the session has begun after Christmas, some six days are devoted to the Address in reply to the King's Speech. The average amount of time needed for each of these classes of business is 14 days for financial business, 14 for private members' business and 6 for the Address, making a total of 34 days. A balance of 11 parliamentary days is all that remains for government business, and to make certain of this it is necessary to begin the session before the end of January. It is not surprising if in this period of congestion an urgent government bill necessitates the appropriation of some at least of the private members' days.

## 2. SUMMER PERIOD

The summer period of the session, which begins after the Easter holiday, has its termination, about the beginning of August, fairly well defined by the provision in S.O. No. 14 that the days allotted to supply shall be concluded before 5 August. The financial business of this part of the session, which is even heavier than that of the preceding period, comprises the stages of the budget and Finance Bill and also the greater part of the twenty days allotted to supply with the resulting Appropriation Bill. Private Members' days amount to four if the session has begun before Christmas, or seven if it has begun after Christmas. The total time which is devoted on an average to these classes of business amounts to some 36 or 39 days. As the length of this period of the session may be put at 70 days, the amount of time left for the Government programme of legislation is some 31 to 34 days, from which must be deducted not less than five days for unforeseen demands, such as the discussion of a motion of censure.

## 3. AUTUMN PERIOD

The autumn period of the session has its termination fixed by Christmas. It may begin at any time after the summer holiday period, but in fact it seldom begins before the latter half of October. The business of this part of the session depends entirely on whether it is used for the purpose of winding up an old session or beginning a new session. The recent tendency has been to use it for the latter purpose. This requires a certain effort which is not always successful. If the autumn sitting is used for the purpose of winding up a session its average length of seven weeks, or about 34 parliamentary days, is all government time and can be devoted exclusively to Government business, except for any incidental demands for other business. On the other hand, if it is used for the purpose of beginning a new session some ten days will be lost to the Government and allotted to private Members (see p. 282), and some six days occupied by the debate on the Address.

## ADVANTAGES AND DISADVANTAGES OF OPENING SESSION BEFORE CHRISTMAS

It may be useful to indicate briefly the advantages and disadvantages of beginning the session in the autumn. The great advantage is that this

period is relatively clear of financial business which causes increasing congestion as the end of the financial year approaches. More time can be devoted to legislation, especially that of the Government, but also that introduced by private Members. More bills can thus be read a second time, and the standing committees set to work at an earlier period of the session, than would be possible if the session had begun after Christmas. The disadvantage is that the later stages of bills, which are rendered more numerous by this means, have to be taken in the already congested closing period of a session which, if the plan is to work, has to be ended about the beginning of August. In practice it has been found that the plan does not always work as was intended, that it is sometimes impossible to wind up the session in August with a prorogation, and that the House meets in October for the purpose of disposing of the business left over before the new session can begin. So far no serious disadvantage has become apparent in leaving so long an interval between the main part of a session and its close.

Indeed, an incidental advantage, which is the greater the more critical the times are, has been discovered in the fact that Parliament can be summoned together with greater dispatch when it has been dispersed by an adjournment than when it has been dispersed by a prorogation. In comparison with this the anomaly, resulting from the new system, that the old session has to be prorogued and the new session opened within the space of a week is of small account.

## METHODS EMPLOYED TO ECONOMIZE THE TIME OF THE HOUSE

In view of the relatively large portion of the session which, as is indicated by the calculations made above, has to be devoted to business which either forms no part of the government programme or has been turned into an opportunity for initiating criticism of government policy, it is not surprising that every Government finds itself under the necessity, with varying urgency in different sessions and at different periods of the same session, of resorting to various methods, for increasing or economizing the amount of sessional time at their disposal. These methods need only be outlined here for the purpose of indicating their effect on the output of the session. The procedure which is involved in each case is explained in detail elsewhere (see esp. p. 447). These methods may be classified as—

- (1) ordinary and permanent, *i.e.* those which are embodied in the standing orders or form part of normal practice ;
- (2) exceptional, *i.e.* those which, though not infrequent, are reserved for particular occasions and require to be justified by what are called the " exigencies " of public business.

### (1) ORDINARY METHODS OF ECONOMIZING TIME

The methods which form part of the regular system are :

#### (i) Delegation of business.

(a) To committees of various kinds. By this means the House as a whole is spared what is normally the longest stage of a bill—its detailed consideration in committee.

There are five standing committees for this purpose (see p. 614) which normally sit two mornings a week during part of the session. Further, bills of a technical or other special character are referred to select committees (see p. 503). It is sometimes possible to save time in both Houses at once by referring bills to joint committees (see p. 625). Bills considered by select or joint committees are re-committed to committees of the whole House, but this second committee stage is often formal.

In spite of its committee system the House as a whole is often loath to relieve itself of the committee stage of a bill which arouses popular interest.

(b) To public departments or other bodies with power to make orders or regulations.

The resulting subordinate legislation in the form of statutory orders and regulations is considerably more bulky than that of Parliament itself. Where ultimate authority is left to Parliament it is exercised by resolutions which may be either "affirmative"—for the purpose of giving approval—or negative—generally in the form of an address praying for annulment—and which, being business which may be taken after the normal hour for the close of the sitting, do not as a rule congest government time (see p. 367).

## (ii) Limitation of debate.

This is secured by the closure rule (see p. 450). The closure of government business is initiated by the Government but requires the assent of the Chair. Another provision for limiting debate—the selection of amendments—which is very effective in saving time is applied by the Chair in entire independence of government initiative.

## (iii) Limited time for consideration of Estimates.

The main Estimates are automatically closed after they have been considered for the prescribed number of allotted days (see p. 688).

# (2) EXCEPTIONAL METHODS OF ECONOMIZING TIME

The exceptional methods adapted to particular occasions are :

## (i) Application of time-limits to the discussion of bills.

The exceptional method of limiting debate is by what are called "allocation of time" or "Guillotine" orders (see p. 454). These are moved by the Government, in respect of particular bills of a controversial nature, for the purpose of allotting fixed periods of time to the discussion, not only of the various stages, but also of specified portions of the bills in committee and on report.

## (ii) Prolongation of the sitting.

This is generally effected for particular days, but may be used for specified periods of the session, by "business" motions for the suspension of the eleven o'clock rule (see p. 306) moved by a Minister, usually the leader of the House. The average amount of time gained for government business by this means every session may be reckoned as the equivalent of ten parliamentary days.

## (iii) Abnormal sitting days.

Saturday is occasionally utilized as a sitting day and, very rarely, Sunday (see p. 301). A Saturday or Sunday sitting is secured by a resolution of the House moved on a previous day (see p. 457).



**(iv) Appropriation of private Members' days.**

This is effected by another form of "business" motion (see p. 457) for the purpose of giving precedence to government business either on specified days, or on all days in the session, or for a specified portion of the session.

The conclusion which emerges from the facts, collected in this chapter from the whole range of procedure, is that, while a Government is placed by standing order in effective control of the time of the House, and while it can and sometimes does use its influence over the majority of the House to remove any and every impediment to the full exercise of this control, yet reasonably adequate safeguards exist for the rights of the minority and of private Members as individuals; for these rights are inextricably embedded in the procedure by which Ministers secure the passage of indispensable portions of national business, and no Government could go far in withholding these rights without bringing the machinery of Parliament to a standstill.

## CHAPTER XV

### A SITTING : GENERAL ARRANGEMENTS

The purpose of this chapter is to give an account for each House of Parliament separately of the arrangements made for conducting a sitting. This will include the rules regulating the meeting and adjournment of the House, the maintenance of a quorum, and such arrangements as exist for distributing the time of the sitting between various classes of business.

#### IN THE HOUSE OF LORDS

##### ORDINARY DAYS AND TIMES OF MEETING

(1) **Judicial business.**—The House of Lords meets for the transaction of judicial business, which includes the hearing of appeals and the giving of judgment in cases when consideration has been deferred, on Mondays, Tuesdays, Thursdays, and Fridays. The time of meeting is usually half-past ten except on Mondays when the sitting commences at a quarter before eleven, the proceedings on each day opening with prayers which are said by a bishop or, in the absence of a bishop, by the Lord Chancellor or Lord Speaker. The judicial sitting lasts until four o'clock or, on days on which there is a meeting of the House for public business, until a quarter before four, when the House is adjourned "during pleasure" to enable the chamber to be prepared for the legislative meeting.

(2) **Legislative business.**—For the dispatch of public business the House meets on Tuesdays, Wednesdays, and Thursdays, and, when the state of business requires additional sittings, on Mondays and Fridays also (a). The usual hour of meeting is a quarter-past four (b). On Wednesdays, however, on which day there is no judicial sitting, the House meets at a quarter before four and public business may not be commenced before four o'clock, the interval between these times being allocated to the ceremonial introduction of peers and to private business.

Both for judicial and for public business, however, the House may meet at any hour to which it had been adjourned at the preceding meeting. Towards the end of a session the House frequently meets at three o'clock to enable it to deal with the volume of business then before it. Notice

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(a) For extraordinary sittings and adjournments, see below, pp. 301-2.

(b) From 1940, during the war years, earlier meetings have been the rule.

of the hour of meeting for each sitting is always given at the head of the order paper.

#### ADJOURNMENT

No fixed hour is appointed for the rising of the House, the adjournment taking place upon a question proposed usually by the Leader of the House or his representative and put from the woolsack. Orders affecting the adjournment of the House for a period are made by special resolution independent of the adjournment motion (c).

Orders affecting the adjournment have also been made, exceptionally, as part of the adjournment motion itself. Thus in cases where it has been desired to give notice that the House will not meet for public business until a particular date, though the normal judicial sittings will continue, an order has been made adjourning the House to that date "except for judicial business" (d). The correct method, however, is to adjourn the House to the next judicial sitting, the date and time of the next sitting for public business being notified in the order paper.

#### QUORUM

The House may proceed with business if only three lords be present, of whom one may be a lord attending to take the oath. If, however, on a division upon any stage of a bill in the House or in committee, it appears that thirty lords are not present, the Lord Speaker, or Chairman, declares the question not decided, and the debate thereon is adjourned to the next sitting of the House, or, the House being resumed, the committee is set down for the next sitting of the House (e).

### IN THE HOUSE OF COMMONS

#### DAYS AND HOURS OF SITTING

As stated in the previous chapter (p. 279) the House of Commons normally sits upon Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays, rarely on Saturdays, never (except in emergency) on Sundays.

#### TEMPORARY ALTERATION IN TIMES OF SITTING

The times of sitting and of other proceedings given in this and the previous chapter are those laid down by Standing Orders. These times have been varied by a series of amendments to the Standing Orders, which, since 1939, have been agreed to by the House to meet varying conditions of emergency. The latest of these amendments was agreed to on 15th August, 1945.

As these temporary arrangements, which are further considered in the section on Emergency Procedure, p. 813, have varied from session to session, and may at any time be altered, it has been decided to retain throughout these chapters the times prescribed by Standing Order.

The following table shows the main modifications approved by the House for Session 1945-46 :—

(c) See p. 287.

(d) L. J. (1908) 360; *ibid.* (1920) 105; *ibid.* (1930-31) 359; *ibid.* (1931-32) 308.

(e) L. J. (1909) 210; *ibid.* (1918) 274.

Time mentioned in Standing Orders	Nature of Business	Time to be substituted
2.45 p.m.	Meeting of the House	2.15 p.m.
3.00 p.m.	End of Unopposed Business	2.30 p.m.
3.45 p.m.	End of Questions	3.15 p.m.
7.30 p.m.	Adjournment Motions under S.O. No. 8 and Opposed Private Business	6.15 p.m.
9.30 p.m.	End of Opposed Private Business not already under consideration	7.45 p.m.
10.00 p.m.	Closure of Supply on last two allotted days	8.15 p.m.
11.00 p.m.	Interruption of business	9.15 p.m.
11.30 p.m.	Adjournment of the House	9.45 p.m.

Alterations are also made in Standing Order No. 2 to allow the House to sit later than half-past four on Fridays; the beginning of the hour during which a count cannot be taken is advanced from quarter-past eight to half-past seven on ordinary days; while on Fridays this hour begins at quarter-past one (see Votes and Proceedings, 15 August 1945).

#### EXTRAORDINARY SITTINGS AND ADJOURNMENTS

In view of the terms of S.O. No. 23 (as amended in 1933) a sitting on Saturday or Sunday (except in the case of the demise of the Crown) can only be secured by a resolution of the House, made normally by a Minister of the Crown at the commencement of public business. As a sitting on either of these days is not subject to any rules of the House regulating the hours of meeting, interruption, and adjournment, such matters have been provided for in the resolution appointing a Saturday sitting; and such sittings have been held under the same conditions as Friday sittings (*f*), or subject to special directions such as that when government business is concluded the House shall adjourn without question put (*g*).

On the demise of the Crown (*h*), and also on occasions of emergency (*i*), Parliament has occasionally been assembled on a Sunday.

(*f*) C. J. (1888) 427, 493; *ibid.* (1889) 434; *ibid.* (1890) 531; *ibid.* (1920) 492; *ibid.* (1921) 51, 65.

(*g*) C. J. (1889) 453; *ibid.* (1890) 553; *ibid.* (1893-94) 57.

(*h*) C. J. (1699-1702) 782; *ibid.* (1714-18) 3; *ibid.* (1757-61) 929, 933; *ibid.* (1819-20) 89.

(*i*) E.g., outbreak of war, C. J. (1938-39) 411, 412.

**Prolongation of sitting till Sunday morning.**—The prolongation of a sitting till Sunday morning is also of infrequent occurrence, the most recent occasion being in 1883 (*j*).

**Attendance of Parliament at Divine service.**—From time to time, on occasions of national thanksgiving, mourning or supplication (*k*), Parliament as a body has attended divine service. The Houses meet in their respective chambers, and the Speaker of each House, preceded by the mace, makes his way to the church appointed for the service, the House following (*l*). This procedure is considered as a sitting, and is so recorded in the Journal (*m*).

**Attendance of Parliament at certain Royal ceremonies.**—Royal ceremonies which have been attended by Parliament as a body include coronations (*n*), jubilees (*o*), and funeral ceremonies (*p*). The Houses may attend these ceremonies after a preliminary sitting (*q*), as in the case of divine service, or may interrupt the sitting and resume it later (*r*).

**Extraordinary adjournments.**—One or both (*s*) Houses have adjourned as a mark of respect on the occasion of the death of a distinguished Member (*t*), or of the death of a member in the precincts (*u*). Parliament has also adjourned in connection with royal ceremonies (*a*).

#### HOURS OF MEETING

On Monday, Tuesday, Wednesday, and Thursday the House meets at a quarter before three o'clock, while on Friday it meets at eleven o'clock. When the House sits on Saturday (*b*), if the House has not ordered otherwise (*c*), the Speaker fixes the same hour for the meeting of the House as on Friday (*d*).

(*j*) C. J. (1883) 471.

(*k*) L. J. (1918) 186, 271; C. J. (1918) 166, 200, 235.

(*l*) C. J. (1918) 235; 8 May and 15 August 1945.

(*m*) C. J. (1918) 200.

(*n*) C. J. (1837–38) 621. At coronations subsequent to this date Parliament has not attended as a body, but the Members of both Houses have attended by personal invitation; in 1911 and 1937 the Speaker, by His Majesty's desire and pursuant to a resolution of the House represented the Commons, C. J. (1911) 75; *ibid.* (1936–37) 134.

(*o*) C. J. (1887) 245, 259; *ibid.* (1897) 293, 297; *ibid.* (1934–35) 191.

(*p*) C. J. (1910) 154; *ibid.* (1935–36) 54.

(*q*) C. J. (1887) 259; *ibid.* (1910) 154.

(*r*) C. J. (1934–35) 191; *ibid.* (1935–36) 54.

(*s*) L. J. (1882) 139; C. J. (1882) 185.

(*t*) L. J. (1861) 416; *ibid.* (1908) 101; C. J. (1914) 319; *ibid.* (1922) 221; *ibid.* (1937–38) 24.

(*u*) C. J. (1878) 147; *ibid.* (1907) 316; *ibid.* (1921) 334.

(*a*) Both Houses adjourned on the occasion of the marriages of Queen Victoria on 10 February 1840 and of the Prince of Wales on 10 March 1863, L. J. (1840) 43; C. J. (1840) 70; L. J. (1863) 69; C. J. (1863) 102. For other royal marriages Parliament has not adjourned. Parliament has adjourned for royal jubilees (e.g. C. J. (1887) 309; *ibid.* (1897) 301; *ibid.* (1934–35) 188; and coronations, C. J. (1911) 285; *ibid.* (1936–37) 255.

(*b*) C. J. (1920) 495; *ibid.* (1921) 52, 67.

(*c*) C. J. (1873) 122; *ibid.* (1890) 222; *ibid.* (1893–94) 234; *ibid.* (1895) 331; *ibid.* (1908) 386; *ibid.* (1912–13) 533.

(*d*) On Saturday, 12 December 1936, the day after His Majesty's Declaration of Abdication Act, 1936, had received the royal assent, the House met at a quarter to three o'clock for the purpose of taking the oath of allegiance to the new King.

**Announcement of hour of meeting.**—The official announcement of the hour appointed for the next meeting of the House is made by an entry placed, under the Speaker's authority, at the close of the "Votes and Proceedings" (see p. 247), as the announcement of the appointed hour of meeting in the motion which adjourns the House is an exceptional occurrence (e).

**If House sits past hour of meeting on following day.**—If a sitting on any day should be prolonged beyond the hour of meeting on the following day, no independent sitting can take place on that day; and the House rises when it has disposed of the business of the sitting prolonged from the previous day. The House was thus prevented from meeting on Wednesday, 20 July 1904; Thursday, 21 March 1907; Friday, 13 April 1923; Friday, 15 December 1933; Friday, 28 February 1936; Thursday, 23 July 1936; and Friday 23 April 1937.

**Abnormally long sittings.**—On several occasions the House has sat for upwards of twenty-four hours without adjourning.

For example, on 31 July 1877 the debate on the South Africa Bill was continued for 26½ hours; on 31 January 1881, on the Coercion Bill, for 41½ hours; on 30 June 1882, on the Prevention of Crime (Ireland) Bill, for 30 hours; on 19 July 1904, on the Finance Bill, for 25½ hours; on 20 March 1907, on the Consolidated Fund Bill and the Army Annual Bill, for 27 hours; and on 23 July 1936, on the Unemployment Assistance Regulations, for 34¼ hours.

## RULES FOR CLOSING THE SITTING

The closing of a sitting of the House of Commons is now regulated by S.O. No. 1 (2), (3) in the case of the first four sitting days of the week and by S.O. No. 2 on Friday. S.O. No. 1 (2), (3), the so-called "eleven o'clock rule," provides for the interruption of business under consideration at eleven o'clock and for a period thereafter lasting until half-past eleven, called "the time for unopposed business" during which the orders of the day and notices of motions are called in the order in which they stand on the Paper, and may be proceeded with unless they are opposed. When such business is concluded before half-past eleven a motion for the adjournment of the House is necessary to enable the House to rise and this motion can be debated until half-past eleven. On Friday the rule is similar with the substitution of four and half-past four for eleven and half-past eleven except that at the conclusion of business on the Paper no motion for the adjournment of the House is necessary and the Speaker adjourns the House without question put. He does so even if business is concluded before four o'clock. The "eleven o'clock rule" may be suspended and certain classes of business are (under S.O. No. 1 (6)) exempt from its operation. The "four o'clock rule" may be, but seldom is, suspended; no class of business is exempt from its operation. The procedure in closing a sitting is described below in detail, *first*, when the "eleven (four) o'clock rule" is in operation, and, *secondly*, when the rule is suspended or exempted business is under consideration.

### 1. WHEN THE "ELEVEN O'CLOCK RULE" IS IN OPERATION

**Interruption of business.**—Under S.O. No. 1 on every day of the week, except Saturday and Sunday, the working hours of the House are

(e) C. J. (1909) 547.

subject to the following regulations. Business is interrupted on Monday, Tuesday, Wednesday, and Thursday at eleven o'clock, when, if the House be not engaged on exempted business (see pp. 305-6), the Speaker rises from the chair and interrupts the business then under consideration; or, if the House be in committee, the chairman leaves the chair to make his report to the House. Under S.O. No. 2 on Friday the moment of interruption is four o'clock. The business under consideration at the moment of interruption stands over until the next sitting or such other sitting as the member in charge thereof may appoint (S.O. No. 1 (7)).

When there has been no opposition to such a course the House has again resolved itself into committee on a bill, on which, at the appointed moment of interruption, the chairman had reported progress. The committee has then proceeded through the bill, and reported it, C. J. (1860) 166; *ibid.* (1888) 273; *ibid.* (1894) 62. Proceedings on consideration of Lords amendments to a bill, interrupted at eleven o'clock, have been similarly resumed, *ibid.* (1919) 246. For cases in which on resumption objection has been taken to further progress in committee, see *ibid.* (1895) 64; *ibid.* (1907) 280; *ibid.* (1911) 479; *ibid.* (1919) 65; H. C. Deb. (1919) 113, c. 1244, 1248.

*Dilatory motions and closure.*—Dilatory motions pending at the moment of interruption, *i.e.* motions for the adjournment of the House or of the debate, or that the chairman do report progress, or do leave the chair, lapse without question put (*f*) (see p. 382). At that moment also closure may be moved; and if closure be moved, or if proceedings under the closure rule be then in progress, the Speaker, or chairman, does not leave the chair until the questions consequent thereon, and on any further question, as provided in S.O. No. 26, have been decided.

*Transaction of business after moment of interruption.*—After the business under consideration at eleven o'clock, or at four o'clock on Friday, has been disposed of, no opposed business can be taken. The remaining orders of the day and notices of motions are called in the order in which they stand on the Paper and proceedings on an order of the day or motion can be carried on during the time thus set apart for unopposed business, although debate may arise thereon, until a division be challenged upon a question proposed from the chair, or objection be taken to further proceeding. The business then becomes opposed business; and further consideration thereof must be adjourned in accordance with the provisions of the standing order until the next sitting, or until such other sitting on any day on which the House ordinarily sits as the member in charge of the business may appoint.

As during the time for unopposed business no division can be taken, the Speaker has disregarded a challenge to the question put on a motion for the adjournment of the House, and, treating the motion as a formal motion, has declared that the ayes had it, and left the chair (Parl. Deb. (1905) 142, c. 1512), while for the same reason he has refused to propose an amendment to the question for adjournment, (*ibid.* 149, c. 1494.)

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(*f*) On adjournment at six o'clock on Wednesday, C. J. (1889) 55; interruption at midnight, *ibid.* (1889) 134; *ibid.* (1890) 252; *ibid.* (1894) 7; *ibid.* (1904) 270; progress, at midnight, *ibid.* (1890) 370; interruption at eleven o'clock, *ibid.* (1911) 420; *ibid.* (1924) 39; postponed proceedings on resumption after eleven o'clock, *ibid.* (1924) 37; at five o'clock on Friday, *ibid.* (1912-13) 208.

**Formal motions during time for unopposed business.**—In the case of opposed business essential to the completion of the transaction on which the House is engaged at the moment of the interruption of business, the Speaker has overruled an objection to the taking of opposed business after that hour. Thus he has not permitted opposition to formal questions, such as the addition of the words, "upon this day six months" (*g*), when the House has disagreed to the second reading of a bill; or the entry of the Speaker's reprimand or admonition upon the journal of the House (*h*); nor can an objection that the proceeding takes place during the time set apart for unopposed business be made to a formal motion for the purpose of carrying on the business of the House, such as a motion for the appointment of a committee to draw up reasons for disagreeing with amendments made by the Lords to a bill; a motion ordering the presentation of papers moved by a minister of the Crown (*i*); a motion for the discharge of an order for a return by the Member who had moved for the return (*j*); or for the withdrawal of a bill by the Member in charge thereof (*k*).

Similarly objection cannot be taken to the announcement (which is technically a motion) by a Minister in charge of an order of the day of a further day to which it is to be deferred. On the other hand a motion made immediately after a bill is read a second time that the bill be committed to a committee other than a standing committee may under S.O. No. 46 (*i*) be decided by a division during the time for unopposed business.

## 2. WHEN THE "ELEVEN O'CLOCK RULE" IS NOT IN OPERATION

(*i*) **Business exempted under standing order.**—It is provided under S.O. No. 1 (*6*) that proceedings on a bill originating in committee of ways and means, proceedings made pursuant to any Act of Parliament (including proceedings on the Army and Air Force (Annual) Bill) or proceedings in pursuance of any standing order, the proceedings on the reports of the Committee of Ways and Means and committees authorizing the expenditure of public money, except the Committee of Supply, may be entered upon after eleven of the clock, though opposed, shall not be interrupted under the provisions of this standing order, and if under discussion when the business is postponed under the provisions of any standing order (see pp. 314-5) may be resumed and proceeded with after eleven o'clock.

**Proceedings under Acts of Parliament and standing orders.**—The principal proceedings under Acts of Parliament relate to draft orders in council, rules of court and statutory orders and regulations presented to both Houses as parliamentary papers. For the conditions under which proceedings with regard to these rules and orders qualify to be exempted from interruption, see p. 367. An address for the appointment of a judge under the Supreme Court of Judicature Act, 1910, is exempted business,

(*g*) C. J. (1888) 143.

(*h*) C. J. (1892) 167; Parl. Deb. (1892) 3, c. 964.

(*i*) Parl. Deb. (1882) 266, c. 1811; H. C. Deb. (1909) 5, c. 1162.

(*j*) 3 June 1904, Mr. Speaker's ruling (not recorded in Parliamentary Debates).

(*k*) Parl. Deb. (1888) 328, c. 1883; *ibid.* (1895) 33, c. 1428.



(H. C. Deb. (1912-13) 41, c. 381); as are resolutions made under the Church of England Assembly (Powers) Act, 1919 (see p. 566); the German Reparation (Recovery) Act, 1921; and the Mining Industry Act, 1920, (C. J. (1920) 485; H. C. Deb. (1920) 136, c. 669; C. J. (1921) 283; H. C. Deb. (1921) 144, c. 2572, 2577; C. J. (1922) 51; H. C. Deb. (1922) 151, c. 1198.) A resolution which is not made pursuant to a statute but is necessary for the provisions of a statute to have effect is not exempted business, e.g. a resolution applying the Tribunals of Inquiry (Evidence) Act, 1921, C. J. (1922) 26, 27. Proceedings on resolutions approving mail and telegraphic contracts, which require under S.O. No. 71 to be approved by the House of Commons, are an example of business exempted because made in pursuance of a standing order (C. J. (1935-36) 227, 301; H. C. Deb. (1935-36) 312, c. 385).

In the case of a motion of an unofficial Member, this provision is rendered nugatory when an order of the House is in force for its adjournment without question put at, or at the end of a limited debate after, the conclusion of government business (Parl. Deb. (1907), 180, c. 1621; *ibid.* (1908) 196, c. 559; H. C. Deb. (1918) 108, c. 1073), unless special provision is made for its consideration (C. J. (1914) 361; *ibid.* (1919) 24, 325; *ibid.* (1920) 390; *ibid.* (1921), 291, 372; *ibid.* (1923) 334), or facilities are afforded in individual cases by the Government (*ibid.* (1917-18) 163; H. C. Deb. (1917) 96, c. 735.)

## (2) Exemption of specified business by order of the House.—

It is also provided, by Standing Order No. 1 (8), that at the commencement of public business a motion may be made by a Minister of the Crown, and decided without amendment or debate (*l*), "That the proceedings on any specified business (*m*), be exempted at this day's sitting from the provisions of the standing order 'sittings of the House' " (*n*). If such a motion be agreed to, the business so specified is not interrupted if it is under discussion at eleven o'clock that night (*o*), may be entered upon at any hour although opposed (*p*); and, if under discussion when the business is postponed at half-past seven o'clock (under S.O. No. 6 (4) or 8 (see pp. 314-5), may be resumed and proceeded with, though opposed, after the interruption of business (*q*). The fact that any proceedings are so exempted does not prevent a motion being made for the adjournment of the House or for a count being taken in the course of those proceedings (*r*).

## DISPOSAL OF QUESTIONS PENDING AT MOMENT OF INTERRUPTION

(1) **When no objection is taken.**—By a convenient, and indeed necessary, elasticity of practice, the standing orders which prescribe a limit to the time for the transaction of business are not so strictly enforced

(*l*) Notice is required of such a motion, H. C. Deb. (1917) 95, c. 1626, and if it should deviate from the prescribed form, it would be open to debate, Parl. Deb. (1905) 148, c. 1144.

(*m*) The business to be exempted is specified sometimes in general terms, e.g. government business, C. J. (1919) 110; proceedings on any Lords' amendments to a bill, *ibid.* (1922) 113.

(*n*) C. J. (1919) 72, 74, etc.

(*o*) C. J. (1919) 239; *ibid.* (1920) 226.

(*p*) C. J. (1919) 240; *ibid.* (1921) 165.

(*q*) C. J. (1919) 104; H. C. Deb. (1919) 114, c. 2185; C. J. (1920) 33, 34; *ibid.* (1921) 145, 146.

(*r*) Speaker's Private Ruling, 6 October 1931.

as to prevent the House (unless objection is taken) from completing, when the fixed hour arrives, the proceeding on which a decision is in process of being taken (s).

Procedure thereon is extended, under this practice, not only beyond the hour appointed for the interruption of business, but even (if necessary) beyond the hour appointed for the adjournment of the House. Consequently, whenever a question is under decision, either by collecting the voices or by a division, at an hour appointed by the standing orders for the interruption of business, the decision of the House is announced and acted upon after that fixed hour, or even, if the proceeding involves several questions, beyond the hour fixed for the adjournment of the House. Nor does the fact that the moment is passed when business should be interrupted, or the House be adjourned, prevent the proposal from the chair of the main, original or any further questions consequent upon that decision of the House, and any such question may be decided, if no objection is taken, by a division.

The Speaker, on consideration of the amendments made by the Lords to a bill, when a proposed amendment to a Lords' amendment has been disposed of, has proposed the question for agreeing to the Lords' amendment, after the moment for the interruption of business (C. J. (1890-91) 165). The question for agreeing to the resolution of a committee has similarly been proposed by the Speaker after an amendment has been disposed of.

The question on a motion made under S.O. No. 46 (1) for the committal of a bill to a committee other than a standing committee after the fixed hour of interruption must be proposed even if objection be taken (see p. 503).

(2) **When objection is taken.**—If, however, when such a question is proposed from the chair, a Member rises to object to further proceeding, or offers to speak to the question (an action which is construed as signifying objection) (t) his action brings into force the provisions of S.O. No. 1 (5) and converts the business then under transaction into opposed business. The Speaker, or in committee the chairman, therefore proceeds to interrupt the business (u); and its consequent disposal under the terms of S.O. No. 1 (7) necessarily follows, unless thereupon closure be moved pursuant to S.O. No. 1 (4) (see p. 452).

The practice of completing business begun before the fixed hour by putting successively all questions pending at the moment of interruption, is best elucidated by examples.

#### EXAMPLES OF PROCEDURE ON BUSINESS PENDING AT MOMENT OF INTERRUPTION

1. **When no objection is taken.**—The examples will show the practice of the House regarding the following questions put from the chair after the time prescribed for the interruption of business, or for the adjournment of the House, when objection is not taken to further proceeding, and closure is not moved.

(s) C. J. (1873) 403; Parl. Deb. (1873) 217, c. 1230-32; *ibid.* (1877) 233, c. 306.

(t) Care should be taken to distinguish the two cases. In the case of business *pending* at the moment of interruption merely speaking to the question is taken to signify objection to proceeding with it. In the case of business *commencing after* the moment of interruption it is necessary for a Member to say "I object."

(u) C. J. (1887) 249; Parl. Deb. (1887) 315, c. 488; C. J. (1892) 141.

(1) A division was in progress, at the time fixed for the adjournment of the House, on an amendment to the main question to leave out therefrom all the words after the first word, "That," in order to add other words. The question, that the words proposed to be left out stand part of the question was negatived: and then the questions for the addition of the words of the amendment, and the main question, so amended, were successively put from the chair (*a*).

(2) A division was in progress, at the time fixed for the interruption of business, on the question that the word "now" should stand part of the question for the second reading of a bill. The question upon the word "now" was negatived; the words, "upon this day six months," were added: the main question so amended was agreed to, and the bill was put off for six months (*b*).

(3) When a division on an instruction to a committee on a bill was continued until after the time fixed for the interruption of business, and notice of another instruction stood upon the paper, which was out of order, the Speaker, having pointed out the informality of that notice, left the chair forthwith, under S.O. No. 51 (now 16) stating that he did so in order to complete the business begun before the time fixed for the interruption of business (*c*).

(4) The division upon the question for the Speaker's leaving the chair on first going into committee on the army estimates was not concluded until after the time fixed for the interruption of business. As the question was decided in the affirmative, the Speaker left the chair and the House resolved itself into the committee (*d*).

2. **When objection is taken.**—Examples will now be given of the adjournment upon objection taken of further proceedings consequent upon a question under decision at the hour fixed for the interruption of business, the right to move closure at the moment of the interruption of business not having been exercised.

(1) When to the question that a bill be now read a second time an amendment was moved to leave out those words, and to substitute a statement urging reasons why the bill should not be read a second time, and the House had decided that the words proposed to be left out should not stand part of the question, the question for the addition of the words of the amendment was proposed from the chair: but, as the hour for interruption was passed, and objection was taken to further proceeding, the debate was immediately adjourned (*e*).

(2) On the consideration of a bill on report, when a division on the second reading of a new clause was concluded after the hour fixed for the interruption of business, the Speaker announced that if no amendments were offered, he would put the question, "That the clause be added to the bill": but on a Member intimating that he had an amendment to offer, the Speaker adjourned further proceedings on the clause, and the consideration of the bill was appointed for the morrow (*f*).

(3) When an amendment to leave out words from a proposed question in order to insert other words had been moved and the question "that the words proposed to be left out stand part of the (main) question" had been negatived

(a) C. J. (1889) 180.

(b) C. J. (1877) 111; Parl. Deb. (1877) 233, c. 306.

(c) C. J. (1892) 154; Parl. Deb. (1892) 3, c. 669; see also C. J. (1897) 83; Parl. Deb. (1897) 45, c. 1638.

(d) C. J. (1904) 71.

(e) C. J. (1924-25) 186.

(f) C. J. (1890-91) 372; Parl. Deb. (1891) 354, c. 877.

by a division carried on until after the fixed hour of interruption the question for insertion of the words of the amendment was proposed. But as a Member rose to move an amendment to the words proposed to be inserted, the debate at once stood adjourned (g).

**Procedure in committee on questions pending at interruption of business.**—Procedure in a committee of the whole House regarding questions pending at the moment of interruption follows the procedure of the House, including the power of moving closure on the interruption of business.

#### ADJOURNMENT OF THE HOUSE, WITHOUT QUESTION PUT

Pursuant to S.O. No. 1 (2) on Mondays, Tuesdays, Wednesdays, and Thursdays, the House, if not previously adjourned, sits till half-past eleven o'clock, when it is adjourned by the Speaker without question put, unless a bill or proceeding exempted from the operation of the standing order (see p. 305) be at that moment under consideration. In the latter case the Speaker does not quit the chair until the exempted business is concluded, after which the unopposed business that stands upon the notice paper is disposed of under the conditions imposed by S.O. No. 1 on business taken after eleven o'clock (see p. 304). As soon as such business is disposed of, the Speaker adjourns the House without question put (h). If more than one exempted motion or order of the day stands upon the notice paper, and the first is not disposed of until after the time appointed for the adjournment of the House without question put, other exempted business may be taken and discussed (i), and when it is concluded, adjournment without question put is postponed until the remaining (non-exempted) business upon the notice paper has been disposed of under the conditions governing the time for unopposed business. If at half past eleven o'clock business which is not exempted business is under consideration the Speaker adjourns the House notwithstanding the fact that other items of business including even exempted business stand later upon the notice paper.

In other words, if the consideration of exempted business is carried on beyond half-past eleven o'clock all subsequent orders of the day have to be read; but if half-past eleven o'clock strikes when an item of business which is not exempted is being read or is under consideration the Speaker does not wait for the remaining orders to be read but adjourns the House at once.

**On Friday (S.O. No. 2).**—At a Friday sitting, the adjournment of the House takes place without question put as soon as the business on the paper has been disposed of (j), or, if all business has not been disposed of, at half-past four o'clock; and as S.O. No. 1 makes no provision for the

(g) C. J. (1908) 72; Parl. Deb. (1908) 185, c. 471.

(h) C. J. (1898) 49; *ibid.* (1900) 54, 76, 99; *ibid.* (1904) 250, 336, 349; *ibid.* (1905) 41; Parl. Deb. (1905) 142, c. 147; C. J. (1906) 156, 219; Parl. Deb. (1906) 156, c. 531; *ibid.* (1906) 158, c. 231; C. J. (1907) 20, 32, 61, 71; *ibid.* (1908) 117; *ibid.* (1914-16) 255, 339, 342; *ibid.* (1916) 30, 77, 80; *ibid.* (1918) 243, 246; *ibid.* (1919) 59.

(i) C. J. (1888) 404; *ibid.* (1889) 446.

(j) Parl. Deb. (1905) 145, c. 268. For temporary alteration in S.O. No. 2, see above, p. 301.

consideration at that sitting of exempted business, the House cannot sit on a Friday beyond half-past four o'clock, save to complete business (*k*) or by order (*l*). If the House continues sitting on Friday beyond half-past four o'clock for the consideration of a special matter (*m*), or to complete business (*n*), the Speaker immediately upon the conclusion thereof, adjourns the House forthwith.

On 8 April 1921, the Speaker allowed a Minister to continue his speech after half-past five o'clock (at that time the hour of adjournment) as he understood that the House was willing to waive the rule on that occasion.

**On Saturday.**—The time for the adjournment of the House on Saturday is not prescribed by standing order.

**Adjournment in case of grave disorder.**—In the event of grave disorder arising in the House, the Speaker may adjourn the House without question put if he thinks it necessary to do so (*o*) or he may suspend the sitting for a time to be named by him (*p*).

On 13 November 1912, and 11 April 1923, the Speaker suspended the sitting for an hour. When he resumed the chair, the state of disorder continued and he adjourned the House without question put (C. J. (1912-13) 409; *ibid.* (1923) 88. See also p. 442.

#### ADJOURNMENT ON QUESTION

Except on occasions when a quorum of the House is not present (see pp. 311-12), or when the Speaker, in pursuance of a standing or other order, adjourns the House without question put, the House can only be adjourned upon a question put from the chair (*q*).

This motion is debatable, and, if (as often happens on the first four days of the week) the business on the paper is disposed of shortly after eleven, it affords a convenient opportunity for raising matters of administrative policy (see p. 425), the discussion of which can continue until the Speaker under S.O. No. 1 (2) adjourns the House without question put at half-past eleven. (For sessional order providing for a regular half-hour's debate on the adjournment motion, see C. J. (1943-44) 8; and p. 814 below). On Friday no such opportunity for debate arises, as no question for the adjournment need be proposed since S.O. No. 2 directs the Speaker to adjourn the House without question put at the conclusion of the business on the paper. In order to provide an opportunity, if one is desired, for a debate of this kind on Friday, a member of the government occasionally moves the adjournment of the House before the business on the paper is concluded.

**Adjournment beyond the next day of sitting.**—When it is intended that the House should be adjourned to a day beyond the next

(*k*) A motion for the committal of a bill made immediately after its second reading is decided forthwith, although the time for the adjournment of the House is passed (see p. 503).

(*l*) C. J. (1921) 84; H. C. Deb. (1921) 140, c. 700.

(*m*) C. J. (1890) 546; *ibid.* (1920) 495; see also *ibid.* (1938-39) 383.

(*n*) C. J. (1909) 210.

(*o*) C. J. (1905) 202; *ibid.* (1911) 351; *ibid.* (1914) 237; *ibid.* (1924) 178.

(*p*) C. J. (1920) 436; H. C. Deb. (1920) 135, c. 39.

(*q*) C. J. (1667-87) 560.

sitting day, a motion is made, by a member of the government (*r*), that the House do "now" (*s*), or at its rising (*t*), or at the conclusion of the sitting (*u*), or at its rising on a future day (*a*), adjourn until the specified day. Adjournments have been made subject to the power given to the Speaker to give notice, on representations from His Majesty's Government, for an earlier meeting of the House (see p. 265) (*C. J.* (1938-39) 62, etc.).

#### SUSPENSION OF A SITTING

The sitting of the House is occasionally suspended with the intention of resuming the transaction of business at a later hour. A suspension of the sitting always occurs on the opening day of a session (see p. 274) (*b*).

A sitting may also be suspended on other occasions, as when a bill from the Commons is under consideration by the House of Lords (*c*), or whilst the House waits for a message from the lords commissioners. On 17 February 1866, the Lords sent a message to the Commons, requesting them to continue sitting for some time, to which the latter agreed, the object being to ensure the passing of the Habeas Corpus Suspension (Ireland) Bill on that day.

If business is concluded before half-past seven o'clock on a day when leave has been given to move the adjournment of the House under S.O. No. 8 (see p. 343), or opposed private business has been set down by direction of the Chairman of Ways and Means (see p. 329), the sitting is informally suspended until half-past seven o'clock. During the suspension of a sitting, the Speaker, the mace being left upon the table, retires from the House, and returns at the appointed hour, when business is resumed without counting the House. As, technically, the House continues sitting, these occurrences are not noted in the Journal.

#### QUORUM OF THE HOUSE

Forty Members, including the Speaker, form the quorum of the House. If the absence of a quorum be proved on Friday after one o'clock (S.O. No. 24) and on other sitting days after four o'clock, except by a division between a quarter-past eight and a quarter-past nine o'clock (see pp. 312-13), the immediate adjournment of the House takes place.

#### DUTY OF THE SPEAKER, REGARDING QUORUM

At the meeting of the House it is the duty of the Speaker to ascertain whether a quorum is present: but when he has taken the chair, that

(*r*) For occasions on which such motions have been made without notice, see p. 374 n. (*o*).

(*s*) *C. J.* (1892) 419; *ibid.* (1905) 151.

(*t*) *C. J.* (1902) 432.

(*u*) *C. J.* (1890-91) 178; *ibid.* (1892) 182.

(*a*) *C. J.* (1895) 147; *ibid.* (1905) 248.

(*b*) Also, when the House has met at ten o'clock to receive a royal assent message, *Parl. Deb.* (1891) 355, c. 323; *ibid.* (1892) 7, c. 450. See also suspension of sitting 31 March 1914, pursuant to resolution of the House, *C. J.* (1914) 109, 112; 4 August 1919, on the occasion of a river pageant, *H. C. Deb.* (1919) 119, c. 36, 65; 24 November 1927, owing to failure of the lighting system, *H. C. Deb.* (1927) 210, c. 2117. See also p. 573 n. (*q*) and p. 820.

(*c*) *Parl. Deb.* (1884-85) 298, c. 1532; *ibid.* (1907) 182, c. 417; *H. C. Deb.* (1914) 65, c. 1832.

responsibility rests upon the House. Accordingly, the only occasion when the Speaker takes the initiative in this matter is immediately after prayers. At that moment, if the necessity should arise, the Speaker refrains from taking the chair and, standing in the place which the Clerk of the House occupies at the table, counts the House. The Speaker announces that the House is made by taking the chair, if he ascertains that forty members are present; but if that is not the case, he waits, seated in the Clerk's chair, or retires from the House, either until a quorum is present, or until four o'clock, when, standing on the upper step of the chair, he again counts the House; and, if a quorum is not present when he has ceased counting, he adjourns the House, without question put, until the next day of sitting (*d*); on a Friday, therefore (or Saturday, if the House sits that day), he adjourns the House until Monday (*e*).

At Friday sittings the Speaker takes the chair although a quorum is not present, and the transaction of business is commenced when the House is made. If, as occasionally happens on a Friday morning, the commencement of business by the House is prevented for some time by the absence of a quorum, the Speaker can request the Serjeant to inform the Members in the committee-rooms that the House is waiting to form a quorum.

According to recent practice, however, the Speaker presumes that the House is made at the beginning of a sitting as at other times, unless his attention is drawn to the absence of a quorum.

#### COUNT OF THE HOUSE

After the House has been made, if notice be taken that forty Members are not present, the Speaker directs strangers to withdraw; and Members are summoned as if for a division. After the expiration of two minutes, the Speaker proceeds to count the House, the outer door being kept open during the proceeding.

On 10 June 1874, complaint was made that Members had been obstructed on their return to the House during a count. The Speaker said it was the duty of the Serjeant to keep free access to the House, and he believed that duty had been properly discharged (*f*).

As has been explained, if it be after four o'clock (on Friday, one o'clock) that the absence of a quorum is proved, the Speaker at once adjourns the House until the next sitting day (*g*): but if it be before that hour, the sitting is suspended until four (or one) o'clock, unless the requisite number of Members has previously appeared in the House (*h*). At four (or one) o'clock the Speaker again counts the House, and if a quorum is not present, he adjourns the House without question put until the next sitting day (*i*). The same course of action is followed if the report of the tellers of a division, taken at any time except between a quarter-past eight and a

(*d*) C. J. (1865) 188; *ibid.* (1866) 340; *ibid.* (1876) 207; *ibid.* (1892) 309.

(*e*) C. J. (1823) 8.

(*f*) Parl. Deb. (1874) 219, c. 1303. See also H. C. Deb. (1917) 94, c. 1435.

(*g*) C. J. (1873) 321; *ibid.* (1931-32) 66.

(*h*) C. J. (1845) 721.

(*i*) C. J. (1884-85) 39; *ibid.* (1922) 135. For temporary alteration in times, see p. 301.

quarter-past nine o'clock, proves that a quorum is not present (*j*). The Speaker has declined to count the House again, when he had recently satisfied himself regarding the presence of forty Members (*k*). Nor would he count the House after a question has been put from the chair, as the division will prove the number of Members present (*l*). Similarly, a count has been refused when a recent division has shown the presence of more than forty Members (*m*).

The Speaker has ruled privately (28 September 1931) that the fact that the business before the House or Committee of the whole House consisted of proceedings which (under an Allocation of Time Order) had to be brought to a conclusion that day should not prevent the House being counted. (*Vide* H. C. Deb. (1931) 257, c. 119-20.)

Permission to raise a point of order during a count has been refused (H. C. Deb. (1940-41) 374, c. 272).

**Quorum in Committee of the whole House.**—If notice be taken in Committee of the whole House that forty Members are not present, the Chairman follows the course pursued by the Speaker in the House. If he ascertains that forty Members are not present, he leaves the chair, the House is resumed, and, on his report, the Speaker counts the House. If forty Members be then present, the House again resolves itself into the committee (*n*); but if not, the Speaker either suspends the sitting until four (or one) o'clock, or if it be four (or one) o'clock, or after that hour, adjourns the House forthwith (*o*). On Friday one o'clock is, as stated above, substituted for four o'clock under S.O. No. 24. If the Speaker before four (or one) o'clock is informed of the presence of the requisite number of Members, he resumes the chair, counts the House again and if forty Members are present, the House again resolves itself into committee (*p*).

**Absence of a quorum between 8.15 and 9.15 p.m.**—The House cannot be counted between a quarter-past eight and a quarter-past nine o'clock, but if on a division taken on any business during that time it appears that forty Members are not present, the business must stand over until the next sitting and the next business must be taken. (S.O. No. 25.)

**Message for attendance in House of Lords makes a House.**—A message from the Sovereign or the lords commissioners for the attendance of the House in the House of Peers as, for example, for the purpose of giving the royal assent to bills, makes a House without regard to the number present. Accordingly, when it is known that the attendance of the House in the House of Peers will be desired, the House meets at the time appointed (*q*), and, if forty Members are not present, the Speaker takes the chair of the Clerk of the House; and when the knock of Black

(*j*) C. J. (1830) 453; *ibid.* (1877) 370; *ibid.* (1882) 420; *ibid.* (1884-85) 181.

(*k*) Parl. Deb. (1877) 235, c. 1771; *ibid.* (1887) 311, c. 620; H. C. Deb. (1928) 214, c. 1160, 1174; *ibid.* (1935-36) 310, c. 2230.

(*l*) Parl. Deb. (1882) 273, c. 331.

(*m*) H. C. Deb. (1933-34) 279, c. 1512, etc.

(*n*) C. J. (1845) 701; *ibid.* (1861) 390; *ibid.* (1864) 439; *ibid.* (1917-18) 122.

(*o*) C. J. (1861) 390; *ibid.* (1900) 315.

(*p*) C. J. (1846) 407.

(*q*) If the commission is not appointed before four o'clock, the House may be counted out, C. J. (1856) 232.



Rod upon the outer door of the House is heard, the Speaker, although forty Members are not present, takes the chair, receives the message delivered by Black Rod, and passes onward to the House of Peers. On his return the Speaker resumes the chair, makes his report to the House; and, as the House has been made, business may be proceeded with, until, on notice taken, it is proved that forty Members are not present.

#### ARRANGEMENT FOR DISTRIBUTING THE TIME OF THE SITTING

The chief principle on which the time of the sitting is distributed rests on a distinction between public business and other business. "Other business" comprises private business, questions, and a number of miscellaneous items of business which are taken before public business. Public business is composed of orders of the day and notices of motions, which is the business on which debate takes place. The order in which the items of "other business" are taken is set out in the next chapter where also the nature and significance of each of these items is described in detail. Each of the great classes of public business is described separately in one of the succeeding chapters.

#### DIFFERENCES BETWEEN FIRST FOUR DAYS OF WEEK AND FRIDAY

As far as other business is concerned there is a marked distinction between the first four days of the week and Friday. For taking some of the items belonging to this business (such as adjournment motions under S.O. No. 8 and opposed private business) no opportunity is provided on Friday under the standing orders. Others such as oral questions may be taken on Friday but seldom are taken (see p. 339). Neither are the time limits for certain business nor the arrangements for dividing the sitting both of which matters are referred to in the following paragraphs, applicable to Friday sittings.

#### TIME-LIMITS FOR CERTAIN BUSINESS

For the general convenience of Members all the miscellaneous minor classes of business are taken before the main business of a sitting, and such items of these minor classes as normally require the attention of the House, are allotted a definite maximum amount of time. These time-limits are :

(1) **For Unopposed Private Business.**—From the conclusion of Prayers till not later than three o'clock.

(2) **For Oral Questions on the Notice Paper.**—From the conclusion of Unopposed Private business till not later than a quarter to four o'clock.

(3) **Public Business (*i.e.* Orders of the Day and Notices of Motions).**—Public business follows after Questions unless one or more of certain minor items of business (see p. 326) require to be disposed of, in which case they are given time and priority *inter se* between Questions and Public Business.

**Divisibility of sitting during Public Business.**—Public Business normally continues until the moment of interruption at eleven o'clock

(see p. 303). But it is liable to be interrupted, or, more technically, suspended and postponed at half-past seven o'clock (see p. 284) (i) by a motion for the adjournment of the House which has satisfied the conditions prescribed by S.O. No. 8 (see p. 343); or (ii) by opposed private business set down by direction of the Chairman of Ways and Means under S.O. No. 6 (4) (see p. 329). At the conclusion of such business the business postponed on its account is resumed. Further, on a Wednesday on which private Members' motions have precedence the sitting is divided at half-past seven in the manner described in the next paragraph.

#### DIVISION OF SITTING ON PRIVATE MEMBERS' WEDNESDAYS

During the early part of the session, when private Members' motions have precedence on Wednesdays, the sitting is divided between the first and second motions by the following arrangement. If the first motion has not been concluded the Speaker under S.O. No. 3 (1) (c) at half-past seven o'clock interrupts the proceedings thereon, and the proceedings on the motion are disposed of in the same manner as business interrupted at eleven o'clock under S.O. No. 1. That is to say, the Speaker rises and says "Order! order!" and unless the closure is moved the debate stands adjourned. Further, if a division in connection with the motion is in progress at half-past seven, after the result has been announced, the Speaker puts any further question necessary to dispose of the motion, and this question or questions may be decided by a division unless a Member objects or rises to speak, when unless the closure is moved, the debate stands adjourned (see p. 308).

When these proceedings are completed the Member, in whose name the second motion stands, is called, unless he is forestalled by a motion for the adjournment of the House under S.O. No. 8 standing over till 7.30, or by opposed private business directed to be taken at that hour by the Chairman of Ways and Means.

It should be remembered that the second private Member's motion has not a fixed hour for its commencement, but is taken at the termination of proceedings on the first motion, should they conclude before half-past seven, and, in such a case, is itself liable to be suspended at half-past seven in favour of business of the forestalling kind mentioned above (see p. 284).

#### INCIDENTAL INTERRUPTIONS

Besides the interruption of business, at the moment prescribed by the standing orders (see p. 303), or by a Member rising to move the closure of debate (see p. 450), proceedings in Parliament may be interrupted by a matter of privilege or order, which calls for the immediate interposition of the House on a matter of recent occurrence (see p. 356); by occasions of sudden disorder in the House, and by the suspension of Members, or other proceedings thereby occasioned (see p. 442); by a message from the Sovereign or the lords commissioners, commanding or desiring the attendance of the House in the House of Peers (7); by the presentation

(7) C. J. (1887-88) 227; *ibid.* (1851-52) 443; *ibid.* (1904) 116; *ibid.* (1907) 305, 442; *ibid.* (1914) 437, 440, 454. On 20 April 1863, the reading of a petition was so interrupted, and was resumed on the return of the Speaker from the Lords, C. J. (1863-64) 168.

of the answer to an address to the Crown (*s*) (see p. 790); by a message from the other House, and by proceedings taken thereon (*t*) (see p. 792); by a report of reasons for disagreeing to Lords' amendments (*u*) (see p. 550); by the clerk of the Crown attending by order of the House to amend a return (*a*) (see p. 183); and by a report from the Serjeant at Arms regarding the execution of the orders of the House (*b*).

When the cause of interruption has ceased, or the proceeding thereon has been disposed of, the debate, or the business in hand which was interrupted, is resumed at the point where the interruption had occurred (*c*); though the resumption of a proceeding, subjected to an interruption, has been sometimes delayed by the occurrence of further interruptions (*d*).

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(*s*) C. J. (1852-53) 438; *ibid.* (1870) 377; *ibid.* (1878-79) 23. This rule, however, does not apply to a message from the Crown. On 5 June 1866, a message relating to the marriage of Princess Mary of Cambridge was brought up between one motion and another; but not so as to interrupt a debate, C. J. (1866) 366.

(*t*) A message brought by the Clerk does not ordinarily interrupt the business under discussion, but there are occasions when such an interruption can arise, C. J. (1871) 57; *ibid.* (1914-16) 31; *ibid.* (1919) 315.

(*u*) C. J. (1880) 431; *ibid.* (1882) 452.

(*a*) C. J. (1837-38) 276, 308.

(*b*) C. J. (1880) 236. The business of the House was in former times interrupted by a motion that candles be brought in: but, by order 6 February 1717, the Serjeant was charged with the duty of having the House lighted when "daylight be shut in," *ibid.* (1714-18) 718; and now the direction to that effect is given by the Speaker or the chairman.

(*c*) See p. 329 as to private business so interrupted.

(*d*) C. J. (1847-48) 551, 755.

## CHAPTER XVI

### ORDER OF ITEMS OF BUSINESS IN PROGRAMME OF SITTING

The purpose of this chapter is in the first place to describe each of the minor items of parliamentary business, other than public business, stating the order of sequence in which they are normally taken in each House ; and, secondly, with regard to the various classes of public business, while leaving their detailed description to subsequent chapters, to set out the formal rules and conditions which apply to such items by virtue of their being brought before Parliament either as orders of the day or as notices of motions.

#### ARRANGEMENT OF BUSINESS IN THE HOUSE OF LORDS

The main business of the House at a legislative sitting falls normally into two groups, private business and public business, the latter consisting of business of which no notice is necessary, notices and orders of the day. The sitting opens with prayers (if these have not been said earlier in the day at a judicial sitting) after which newly created Peers, or Peers raised to a higher rank in the peerage, may be introduced, and members of the House may take the Oath. The following table affords a general indication of the business which may be undertaken at a legislative sitting and the order in which it would be arranged, though variations may be made in the order of certain items, which are not governed by standing orders, to suit the convenience of the House.

#### TABLE OF PRECEDENCE OF BUSINESS

##### 1. INTRODUCTION AND TAKING OF OATH

- (1) Introduction of Peers.
- (2) Introduction of Bishops.
- (3) First sitting in Parliament.
- (4) Taking the Oath.

##### 2. PRIVATE BUSINESS

- (1) Notices respecting Private Bill Standing Orders.
- (2) Proceedings on Private Bills.

## 3. PUBLIC BUSINESS

A. *Business of which notice is not necessary.*

- (1) Message from the Crown.
- (2) Personal Statement.
- (3) Question by private notice.
- (4) Reception of Message from the Commons.
- (5) First Reading of public and provisional order bills brought from the Commons.
- (6) Introduction and first reading of public and provisional order bills originating in the Lords.
- (7) Oral presentation of petitions.

B. *Notices and Orders of the Day.*

- (1) Motion for suspension of Standing Orders.
- (2) Address of congratulation or sympathy to Crown.
- (3) Resolution for approving Special Order of private bill character.
- (4) Proceedings on provisional order bills.
- (5) Proceedings on hybrid bills.
- (6) Proceedings on public bills (a).
- (7) Motions or resolutions on general subjects (a).
- (8) Questions (a).
- (9) Resolutions for approving Special Orders of public bill character (a).
- (10) Resolutions for approving Church Measures (a).
- (11) Motions for address against Draft Orders (a).
- (12) Motions for appointment, etc., of Committees (a).
- (13) Consideration of reports of Committees (a).

## 4. COMMISSION FOR ROYAL ASSENT (b)

In the succeeding paragraphs the proceedings in the House under each of those headings is described and references will be given to other parts of the book in which many of them are dealt with in greater detail and from other points of view.

## 1. INTRODUCTION AND TAKING OF OATH

## (1) INTRODUCTION OF PEERS

By S.O. No. XIII, all Peers by descent, who are twenty-one years of age, have the right to come and sit in the House of Lords without any introduction (see below, p. 320).

Introduction is necessary in the case of newly created Peers, of Peers advanced to a higher degree in the peerage, of Peers succeeding in virtue

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(a) These are taken in the order as handed in at the Table except that on Tuesdays and Thursdays proceedings on public bills take precedence of motions and questions (S.O. No. XXI).

(b) This is fixed for a particular hour to suit the convenience of both Houses and business may be interrupted to take it.

of a special limitation in remainder and not claiming by descent (*c*), or of the eldest son of a Peer called up in his father's barony during his father's lifetime, when the father holds a higher degree of peerage (*d*). If a newly created Peer dies without taking his seat, his son on succeeding to the peerage must be introduced (*e*). In accordance with the recommendations of a Select Committee on Procedure in 1919 the ceremonial introduction of Peers takes place usually on Wednesdays after prayers (*f*).

A Peer is introduced between two other Peers of his own dignity, all in their Parliamentary robes and wearing the collars of their orders, if any. Preceded by the gentleman usher of the Black Rod, Garter King of Arms, who carries the patent, the Earl Marshal, and the Lord Great Chamberlain, or their deputies, they enter the House from the bar and advance to the woolsack, where the newly created Peer, kneeling, presents his patent, which he has received from Garter, together with his writ, to the Lord Chancellor, after which he retires with his supporters to the table. The patent and writ are then read aloud by the Reading Clerk, who has received them from the Lord Chancellor, the oath is administered to the Peer and he signs the roll. The Peer and his supporters are then conducted to the bench of their degree, whence they bow thrice to the Lord Chancellor, rising and removing their hats at each bowing. The Peer is then conducted to the woolsack where he shakes hands with the Lord Chancellor.

If the Prince of Wales be introduced, a more elaborate procession is formed and his coronet is carried by a member of the Household. His patent is read by the Clerk of the Parliaments and he is conducted to his chair on the right of the throne (*g*). Any other member of the royal family, having special precedence in the House under the Act, 31 Hen. 8, c. 10, is conducted to a chair placed for him on the left of the throne (*h*).

A special ceremony is observed in the case of the introduction of the Lord Chancellor. The leader of the House having announced that His Majesty has been pleased to create the Lord Chancellor a Peer, the Lord Chancellor in his Peer's robes, with his supporters preceded by Black Rod, the Earl Marshal, Garter King of Arms, and the Lord Great Chamberlain enter the House and the Lord Chancellor, taking his patent from Garter, kneeling, lays it upon the throne. The remainder of the ceremony is similar to that of the introduction of a Peer except that the Lord Chancellor is conducted not only to the bench of his degree, whence he bows thrice to the cloth of estate, but also to the upper end of the Earls' bench whence he bows thrice to the throne (*i*). Similarly if the Peer to be introduced be the Lord President, the Lord Privy Seal, the Lord Steward, the Lord

(*c*) S.O. No. XIV.

(*d*) If the eldest son of a Peer be summoned to Parliament by the style of an ancient barony held by his father, he takes precedence according to the antiquity of the barony, L. J. (1845) 18; *ibid.* (1874) 12; *ibid.* (1887) 375.

(*e*) L. J. (1886) 16; *ibid.* (1904-05) 252; *ibid.* (1909-10) 182; *ibid.* (1924-25) 86.

(*f*) L. J. (1919) 113.

(*g*) L. J. (1863-64) 6; *ibid.* (1918) 14.

(*h*) L. J. (1865-67) 382; *ibid.* (1874) 224; *ibid.* (1881) 256; *ibid.* (1890) 373; *ibid.* (1892) 315; *ibid.* (1920) 231; *ibid.* (1928) 93; *ibid.* (1933-34) 353.

(*i*) L. J. (1921) 264; *ibid.* (1929-30) 12.

Chamberlain, or a principal secretary of state, he is first seated according to his precedence and then according to the precedence of his office (*j*).

Under the Appellate Jurisdiction Act, 1887, Lords of Appeal may take their seats in the course of the sittings held for hearing appeals during prorogation.

**Representative Peers.**—Representative Peers for Scotland and Ireland are not introduced. The latter bring their writs, take the Oath and sign the roll. Writs are not issued to the Representative Peers for Scotland, who simply take the Oath and sign the roll, a certificate of their election having been laid before the House at the commencement of each Parliament (see p. 267).

The patent of a Peer is entered verbatim in the Journal on the day of his introduction and subsequently delivered back to him, but in the case of a peer who has been called up in his father's barony, no patent is produced or read (*k*).

## (2) INTRODUCTION OF BISHOPS

The ceremony for the introduction of bishops is similar to that of temporal Peers except that the officers of state do not attend and there is no patent. The bishop presents his writ to the Lord Chancellor and it is read at the table and he is conducted by two other bishops, his supporters, to his place on the bishop's bench, whence he bows thrice to the Lord Chancellor. If a bishop be translated he must be introduced as the holder of the see to which he has been translated.

## (3) FIRST SITTING IN PARLIAMENT

Under S.O. No. XIII all Peers by descent, being of the age of one and twenty years, have the right to come and sit in the House of Lords without any introduction. Such Peers may, if they think fit, upon taking their seats, lay on the table of the House the letters patent by which the peerages in right of which they are summoned to Parliament shall have been granted in order that the same may be entered on the journals of the House.

Before a writ is issued to a Peer succeeding by descent he is required to furnish evidence to the satisfaction of the Lord Chancellor as to his claim to the succession. If the Lord Chancellor is not satisfied, the matter may be referred to the Committee for Privileges (*l*).

As soon as the writ has been issued from the Crown Office, the Peer may bring it to the table where he takes the oath and signs the roll. He subsequently shakes hands with the Lord Chancellor. In the case of a Peer who takes his seat on his peerage being called out of abeyance, an entry is made in the Minutes of Proceedings and in the Journals that the Lord Chancellor "explained to the House his Lordship's descent" and his precedence is recorded (*m*).

## (4) TAKING THE OATH

By S.O. No. XVI, the oath or affirmation prescribed by statute to be taken or made by members of both Houses on taking their seats in every

(*j*) L. J. (1906) 8.

(*k*) L. J. (1845) 18; *ibid.* (1874) 12; *ibid.* (1887) 375.

(*l*) H. C. 278, pp. 18-25 (1894).

(*m*) L. J. (1913) 95; *ibid.* (1916) 104. See also H. L. Deb. (1935-36) 99, c. 224.

Parliament (see p. 267) can be subscribed at any convenient time when the House is sitting either for judicial or other business.

## 2. PRIVATE BUSINESS

### (1) NOTICES RESPECTING PRIVATE BILL STANDING ORDERS

The standing orders of the House of Lords relating to private bills are printed separately from those relating to public business in a volume in which are included the standing orders affecting provisional order bills, special orders and orders made under the Government of India Act, 1935, and the Government of Burma Act, 1935. Amendments to these standing orders are moved, when required, by the Chairman of Committees and an Order is made for them to be printed as amended.

### (2) PROCEEDINGS ON PRIVATE BILLS

Proceedings on private bills in the House are usually of a purely formal character, the merits of private bills being debated before the committees to which the bills are referred. Occasionally, however, where a private bill raises a point of principle, or where the public interest is involved or where it is desired to move an instruction to the committee, debates take place in the House. The motions for the second and third readings of private bills are moved by the Chairman of Committees; except that, when notice has been given that a private bill is to be opposed in the House, it is customary for the Chairman of Committees to request the promoters to find another Peer to move these motions in order that he may not put himself in the position of appearing to prejudge the issue which he may be called upon subsequently to consider in Committee.

## 3. PUBLIC BUSINESS

### A. BUSINESS OF WHICH NOTICE IS NOT NECESSARY

As will be seen from the table printed on p. 318, certain business of which previous notice is not necessary may be taken at the conclusion of private business or, on Wednesdays, as soon after four o'clock as private business is completed.

### (1) MESSAGES FROM THE CROWN

A message from the Crown is usually in writing under the sign manual. It is brought by the Lord Chamberlain (*n*) or Lord Steward or, on occasions, by the leader of the House (*o*), or the Lord Chancellor (*p*), who informs the House that he has a Message from the King. He then reads the message from the table, the Lords being uncovered, after which he hands it to the Lord Chancellor. According to the practice of the House such messages have precedence over other public business.

The message may be taken into consideration forthwith, but in most

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(*n*) L. J. (1936-37) 63, 84.

(*o*) L. J. (1936-37) 54.

(*p*) L. J. (1901) 50.



cases an order is made for it to be considered on a subsequent date, when an humble address is moved, usually by the leader of the House, thanking His Majesty for his most gracious message and assuring him that the House will adopt such measures as are necessary to comply with His Majesty's wishes. The address is usually agreed to *nemine dissentiente* and is ordered to be presented to His Majesty by the Lords with White Staves. To this address His Majesty subsequently makes a reply which is delivered to the House in the same manner as a message.

The principal occasions on which messages are received from the Crown are set out in Chapter XXIX.

## (2) PERSONAL AND MINISTERIAL STATEMENTS

A personal statement may be made by the leave of the House, which is granted as a matter of courtesy, and may give rise to a debate. Such statements may be explanatory of passages in a previous speech which have given rise to misconception or may be in justification of conduct which has been criticized (q) or, if made by a Minister who has resigned his office, may be a means of enabling him to set forth the motives which prompted his resignation. Occasionally such statements take place on points of order.

By private arrangement also, conducted through the party whips, tributes may be paid, before public business commences, on the occasion of the death of distinguished members of the House or of public servants of distinction. There are other methods also by which the House shows its respect to the memory of a deceased statesman (see p. 302).

## (3) QUESTIONS BY PRIVATE NOTICE

Occasionally if some event of public importance has occurred upon which it is desired to ask the Government for information and, owing to the urgency of the matter, it has not been possible to give previous notice in the Order Paper, a question may be asked upon it by private notice. Questions may also be asked by private notice as to the arrangement of business, the course which the Government intend to adopt with regard to particular legislative proposals, or in general to afford to the Government an opportunity of making a statement with regard to their policy.

Although speeches may be made upon such questions it is not customary that they should be debated at length, and if further discussion is required a notice is put down for a subsequent date in the order paper in the usual way.

## (4) RECEPTION OF MESSAGES FROM THE COMMONS

The official form of communication between the two Houses is by written message. Any action, therefore, taken by one House which is required to be communicated to the other is contained in a message (see p. 791).

All messages from the Commons except those relating to private bills are read aloud by the Clerk of the Parliaments. They may be received at any time during the sitting of the House, but since messages from the

(q) H. L. Deb. (1922) 51, c. 577.

Commons usually relate to the proceedings which have taken place on the previous day, they are generally sent up to the Lords at the beginning of their sitting. The bills to which messages relate are bound up with the message.

(5) FIRST READING OF PUBLIC AND PROVISIONAL ORDER BILLS  
RECEIVED FROM THE COMMONS

As soon as the message has been read in which a public or provisional order bill is sent up from the Commons, a motion is made, usually by the Chairman of Committees, that the bill be read a first time. The question is then put from the woolsack. The Peer who is to take charge of a public bill informs the table of the date on which he proposes to take the second reading and the bill is entered for such date in the Order Paper or, if no date be appointed, is set down as awaiting second reading. Not more than twelve sitting days must elapse before a bill received from the Commons be set down for second reading (*r*) (see p. 466).

(6) INTRODUCTION AND FIRST READING OF PUBLIC AND PROVISIONAL  
ORDER BILLS ORIGINATING IN THE LORDS

Any Peer is entitled to present a bill to the House without previous notice and without obtaining the leave of the House. To present a bill, a Peer rises in his place and, reading the long title of the bill, moves that it be read the first time. A copy of the bill is then handed in at the Table and an order made for it to be printed. The name of the Lord who is responsible for the bill is endorsed on the back, but it is not the custom in the House of Lords for more than one name to appear.

Bills are seldom opposed on first reading though instances to the contrary have occurred (see p. 466). Occasionally also notice of intention to present a bill is given (see p. 464).

(7) ORAL PRESENTATION OF PETITIONS

Petitions are usually presented before the notices and orders of the day are called on, but those relating to a bill may be presented immediately before the motion is made to proceed with the bill (*s*). There is nothing to prevent a Lord from speaking on the subject of the petition which he is presenting, but it is usual for him, if he intends to address the House at any length, to give notice of its presentation. In ordinary circumstances, petitions, which must be signed by the Peer presenting them, are merely handed in at the table and entered in the *Minutes of Proceedings*.

## B. NOTICES AND ORDERS OF THE DAY

As soon as private business and any business of which notice is not necessary has been disposed of, the House proceeds to the notices and orders of the day, as printed in the Order Paper, which form the principal

(*r*) S.O. No. XXXVIII.

(*s*) S.O. No. XXI.

business of the sitting. There is a distinction between these. A Peer is entitled to ask a question of the Government or to move a motion or resolution on a subject of public interest on any day which he thinks suitable but he should give notice of his intention to do so in the order paper (S.O. No. XXI). Such question or motion is a notice. An order of the day is a proceeding which can only be dealt with as the outcome of a previous order made in the House itself. The successive stages of bills are orders of the day since the House at each stage makes an order and appoints a date for the consideration of the next stage, and without such order the bill cannot be further advanced. A question or motion becomes an order of the day if the debate upon it be adjourned and the House orders the continuance of it on a subsequent date.

#### ORDER OF PRIORITY

Notices and orders of the day are inserted in the Order Paper according to the priority of their reception at the Table, except that—

(1) motions to suspend or dispense with the standing orders are taken first ;

(2) Resolutions for approving Special Orders of a private bill character, proceedings on provisional order bills and hybrid bills, being mainly uncontentious, are disposed of before the remainder of public business is embarked on ;

(3) on Tuesdays and Thursdays the proceedings on public bills have precedence over questions, motions, or resolutions (S.O. No. XXI).

This priority is strictly observed, nor can any notice or order of the day, once fixed for a particular date, be advanced to an earlier date without a motion for suspending the standing order, or by arrangement between the Lords in whose names notices or orders of the day that would be affected appear, to which arrangement the consent of the House must be given. Neither can the order of business for a particular day be disturbed except by similar proceedings, which are avoided as far as possible. A notice or order of the day may, however, be postponed to a later date at the request of the Peer responsible, and in the latter case an order of the House is made accordingly. Government business has no special precedence on any day in the House of Lords, but occasionally towards the close of the session a motion is passed giving government business precedence over other business in order to enable the legislative programme of the Government to be completed.

**Precedence of adjourned business (S.O. No. XXII).**—If at the close of the speech of any Lord, the proceedings on business then in hand be adjourned, or, if, the House being in committee, it is ordered that the House be resumed, the House may thereupon, without notice given, make further order that the business in question be taken first, either at some later hour of the evening, or on some future sitting day to be then fixed.

#### QUESTIONS AND MOTIONS OF WHICH NOTICE HAS BEEN GIVEN

Questions or motions of which notice is given in the order paper may be, and frequently are, the occasion of a general debate. If a Peer wishes

to ask a question without speaking upon it and with a view only to obtaining information, he prefixes an asterisk to his question. If he wishes to reserve to himself the right to reply to the debate, he adds at the end of his question the words "and to move for papers," since, by S.O. No. XXVII, the mover of any motion has a right of reply. If he does not wish for an oral reply, he signifies to the Table that his question is "not for oral answer" and the reply is then published in the Official Report. If he wishes to give notice of his question or motion before fixing it for a definite date, he may cause it to be inserted in the Order Paper for "no day named," but no question or motion may remain on the order paper for more than one month unless within that time a date is fixed for it (S.O. No. XXI).

The various items contained in the table under the heading of Notices and Orders of the Day, comprising as they do the principal activities of the House in its legislative capacity, are described in detail in the respective chapters of this book specifically relating to them.

## ARRANGEMENT OF BUSINESS IN THE HOUSE OF COMMONS

### DIFFERENCE IN ORDER OF BUSINESS BETWEEN FRIDAY AND OTHER DAYS

When the House meets at a quarter to three, as it does ordinarily on the first four days of the week, the programme of business appointed for the day is disposed of in the order set out below (see p. 326). The items of the programme appear in this order in the private and public business notice papers circulated to Members on the morning of each day on which the House sits (see p. 247). But the programme is not absolutely rigid. A certain opportunity for bringing forward without notice questions of an urgent character is provided by the ancient rule that matters affecting the privileges of the House may be raised without notice at the earliest opportunity (see p. 356), and also by the procedure under S.O. No. 8 for dealing with "definite matters of urgent public importance" (see p. 343).

When the House meets at eleven, as it regularly does on Friday, no provision is made for taking certain of these items—all those which require an appreciable amount of time for consideration—such as oral questions, adjournment motions under S.O. No. 8, opposed private business, and the presentation of public bills under S.O. No. 10. The items which can be taken on Friday are taken in the same order as on other days.

### TABLE OF PRECEDENCE OF BUSINESS

The following table of business is given not as representing the programme of a typical sitting, but as indicating the order of relative precedence between any two of the various classes of business, items of which may happen to come up for disposal on the same day. For the sake of completeness all classes are set out.

The order given is not absolutely invariable. Certain classes—for instance, the appointment of money committees—may be taken either in the place indicated below or after the conclusion of the orders of the day. The order given is rather the order which on the whole has been found to be the most

convenient in modern practice, although it must be allowed that it departs in certain particulars from the older practice so far as it was specified in previous editions of this book, though it is not inconsistent with the standing orders.

A full description, in the same order, of the various classes of which this table is composed is given later for the purpose of explaining the action which may be taken with regard to each of them in the course of a sitting.

1. *Business taken immediately after Prayers.*

- (1) Reports of King's Answers to Addresses.
- (2) Communications by Mr. Speaker.
- (3) Motions for New Writs.

2. *Unopposed (and Opposed) Private Business.*

3. *Presentation of Public Petitions.*

4. *Motions for Unopposed Returns.*

5. *Questions to Ministers (or other Members).*

6. *Introduction of New Members and Taking the Oath.*

7. *Adjournment motions under S.O. No. 8 (Leave to move).*

8. *Business taken after any Motion for Adjournment under S.O. No. 8.*

- (1) Motions for leave of absence.
- (2) Giving notice of motions and holding of ballot.
- (3) Ministerial statements (t) and obituary speeches.
- (4) Personal explanations.
- (5) Appointment of "money" committees.
- (6) Consideration of Lords amendments (if not of substance) or messages.
- (7) Raising of a matter of privilege.

9. *Business taken "at the commencement of Public Business."*

- (1) Presentation of Public Bills.
- (2) "Business" motions moved by the Government.
- (3) Motions under S.O. No. 10 for bringing in Bills or nominating Select Committees.

10. *Privilege Motions admitting of notice.*

11. *Public Business (interrupted, if so ordered, by Adjournment motions under S.O. No. 8, or Opposed Private Business).*

- (1) Orders of the Day.
- (2) Notices of Motions.

12. *Exempted Business.*

Proceedings on Statutory Orders and Regulations.

13. *Adjournment motions at end of business.*

# 1. BUSINESS TAKEN IMMEDIATELY AFTER PRAYERS

## (1) REPORTS OF KING'S ANSWERS TO ADDRESSES

When an address has been presented in the ordinary way (*i.e.* by a privy councillor or member of the Household) His Majesty's answer is reported

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(t) Often made in answer to a (private notice) question.

to the House by a member of his Household, usually the Vice-Chamberlain, who acts in the House as one of the Government Whips. This officer presents himself at the bar immediately after prayers, and on being called by the Speaker, announces "His Majesty's answer to a loyal and humble address," proceeds to the Table with the customary three bows, and having read the terms of the royal answer to the House, presents the document containing them to the Clerk for the purpose of entry in the records of the House and proceeds to make his exit in the same formal manner. (For the general subject of communications between the Crown and Parliament, see pp. 780-87.)

## (2) COMMUNICATIONS BY MR. SPEAKER

Immediately after Prayers or after any item of the kind described above the Speaker, when occasion has arisen, communicates to the House at his discretion the purport, or reads the contents, of any letters he may have received from external authorities. These may include replies to communications of condolence or congratulation made by the House to members of the royal family (see p. 791) or messages of the same kind sent by foreign legislative bodies (see p. 233). They may also include such matters as a letter from a judge communicating the cause of commitment of a Member arrested upon a criminal charge or the sentence passed upon him after trial (see p. 79). It is at this time also that the Speaker announces the death of any Member which has been notified since the last sitting of the House (u).

## (3) MOTIONS FOR NEW WRITS

The next item to be taken after any such communication is any motion for an order of the House to Mr. Speaker to make out his warrant for the issue of a writ for the election of a new Member to fill a vacancy arising in the course of a session. Such motions are moved normally by the Chief Whip of the party to which the Member vacating the seat belonged. As such a motion is technically privileged business, it is made without notice and having, accordingly, precedence over other business can be taken at any time. The order of precedence here assigned to it is that which is generally found to be most convenient (a). The same position in the order of business is assigned to announcements by the Speaker of the fact that he has, during a recess due to adjournment or prorogation, issued

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(u) H. C. Deb. (1937-8) 326, c. 3100.

(a) For instances of new writs moved after the interruption of business, see C. J. (1896) 131; *ibid.* (1902) 74; *ibid.* (1905) 300; at end of the orders of the day on a Friday before the adjournment of the House under S.O. No. 2, C. J. (1913) 141. A new writ has also been moved as a matter of privilege at the conclusion of government business, although an order was in force directing the Speaker to adjourn the House without question put at the conclusion of government business each day, C. J. (1895) 230, 389; Parl. Deb. (1895) 36, c. 766-68; on the motion of an unofficial member, C. J. (1907) 448. See also p. 362, n. (a). An amendment to a motion for a new writ postponing the date of its issue has been ruled out of order, Parl. Deb. (1895) 36, c. 768. For procedure when issue of new writ is opposed see H. C. Deb. (1943-44) 395, c. 1515-16, 1566, and *ibid.* 396, c. 655-8. Encroachment on time for questions by prolongation of proceedings on issue of new writ is contrary to S.O. No. 7 (H. C. Deb. (1942-43) 387, c. 1003 and 1779).

his warrant, as by law provided, for the election of a Member without the immediate authority of the House.

As the conditions which have to be fulfilled before the issue of a warrant for a new writ vary with the circumstances in which a vacancy occurs and involve an amount of detail which would be inconvenient here, these particulars are set out elsewhere (see pp. 177-184).

## 2. UNOPPOSED (AND OPPOSED) PRIVATE BUSINESS

After any of the above items which may have occurred, or, if none has occurred, immediately after Prayers, the Speaker calls upon the Clerk at the Table to read the titles of the private bills appointed for that day's sitting; the Chairman of Ways and Means makes the motions necessary to dispose of the stages of the bills so appointed or states the day to which he desires them to be postponed (see below), and also makes any motions standing in his name; and the Speaker calls on Members to make the motions relating to private business of which they have given notice, according to the order in which the motions are arranged on the paper.

### NOTICE PAPER OF PRIVATE BUSINESS

The notice paper, containing the orders of the day and notices of motions relating to private business and to provisional order bills, is prepared by the Committee and Private Bill Office, in pursuance of the provisions of S.Os. 174, 190, and 218, and of the orders of the House, and under instructions received from the Chairman of Ways and Means, and from notices given by the parliamentary agents. The private business is set down upon the paper in the following order:

#### 1. Stages of private bills.

- (1) Consideration of Lords' amendments.
- (2) Third readings.
- (3) Consideration of bills ordered to lie upon the table.
- (4) Second readings.

#### 2. Notices of motions relating to private business other than stages of bills appointed for that day.

These are followed by stages of bills for confirming provisional orders and orders under the Private Legislation Procedure (Scotland) Act, 1936, arranged in the same order, ending with notices of the presentation of such bills. Within each of these classes of bills business set down for the first time is placed on the paper before business deferred from a previous sitting (under the procedure described in the next paragraph) and set down by order of the House. Such business is distinguished by the addition in brackets of the words "By order." This distinction is occasioned by the fact that an item of private business differs from an item of public business in being set down for the first time on the Paper not by order of the House but by the notification of a parliamentary agent. (Provisional order bills, though always set down by order of the House, conform to private bill practice in this respect.)

### TIME FOR TAKING UNOPPOSED PRIVATE BUSINESS

On the first four days of the week when the House meets normally at a quarter to three o'clock the time during which private business can be

taken amounts at the most to ten minutes (b). Business still under discussion at three o'clock stands adjourned (c). Any private business not reached by three o'clock, or in respect of which, when it is called, no motion is made, stands over to the next sitting at the time of unopposed private business. A motion which is contingent on a bill not reached by three o'clock follows the bill and is similarly set down for the next sitting. But a motion which is not contingent on a bill and is not reached lapses unless fresh notice is given by the Member in whose name it stands. Any item of private business to which, when the order for its consideration is read by the Clerk (or, if it is a notice of motion, when the name of the mover is called by the Speaker), a Member signifies objection becomes opposed and cannot be taken at this time. It is accordingly postponed (impliedly by order of the House) to another day at the discretion of the Chairman of Ways and Means under S.O. No. 6 and S.O. 174. He may defer it to a specified day without mentioning the time at which it is to be taken. In that case it becomes an entry "By Order" in the notice paper of private business to be taken at the commencement of the sitting so specified under the procedure laid down by S.Os. 190 and 218, as described above.

When the consideration of private business had been interrupted, or had not been commenced, owing to a message requiring the attendance of the House in the House of Peers, and the House had not returned until after the time during which such business could be taken, the private business that could not be considered owing to the attendance of the House in the House of Peers was set down for the following day (20 and 21 June 1905, Private Business, pp. 567, 577; 28 and 29 April 1921, C. J. (1921) 115, Private Business, pp. 183, 187).

#### TIME FOR TAKING OPPOSED PRIVATE BUSINESS

Another course which is open to the Chairman of Ways and Means under S.O. No. 6 and S.O. 174 in dealing with an item of business postponed owing to objection having been taken is to appoint it for consideration on some future day (or even on the same day) (d) at half-past seven o'clock. The resulting procedure will for the sake of convenience be described here.

Private business so appointed for half-past seven is taken after any motion for the adjournment of the House under S.O. No. 8 has been disposed of (see p. 343), and is distributed as near as may be proportionately between the sittings on which government business has precedence and the other sittings, and is set down in such order as the Chairman of Ways and Means directs. Opposed private business other than that then under consideration cannot be taken after half-past nine o'clock, unless by order of the House (e), but is postponed to a day which the Chairman of Ways and Means appoints.

(b) S.O. No. 6 (2).

(c) C. J. (1941-42) 29.

(d) Parl. Deb. (1905) 151, c. 779; C. J. (1910) 307; *ibid.* (1913) 277; H. C. Deb. (1913) 55, c. 1955; C. J. (1917-18) 71; *ibid.* (1921) 334; *ibid.* (1924) 364, 366; *ibid.* (1926) 282; *ibid.* (1927) 299; *ibid.* (1929-30) 353.

(e) C. J. (1908) 496; *ibid.* (1934-35) 139; *ibid.* (1935-36) 113. Such an order generally exempts such business from interruption under S.O. No. 1.



If when it is called on after half-past nine o'clock business set down as opposed proves to be unopposed, it can be taken and a Member has been allowed then to make an explanation (*f*). Any motion contingent, directly or otherwise, upon opposed private business set down for half-past seven and disposed of, may with the assent of the Chair be taken, even though its consideration is not entered upon until after half-past nine.

If the Member in whose name such a motion stands fails to move it, it lapses unless set down again at the time of unopposed private business, when, if it is again opposed, the Chairman of Ways and Means may, notwithstanding that a previous opportunity for moving it was neglected, appoint a day for its consideration at the time of opposed private business (H. C. Deb. (1928-29) 225, c. 514, 1723).

A motion set down for half-past seven which is not contingent upon a stage of a bill set down for the same hour, if entered upon but not disposed of by the time at which business is interrupted, may be postponed to such time as the Chairman of Ways and Means may appoint. If such a motion has not been entered upon before half-past nine then when opposed private business is concluded, or when the Speaker interrupts it under S.O. No. 1, he calls the Member in whose name it stands in order to give an opportunity for the announcement of a day to which the motion is to be postponed. If, upon its title being read, no motion relative to a private bill is made, the proceedings upon it are postponed till the next sitting at the time for unopposed private business.

No opposed private business may be set down for a Friday sitting. Notwithstanding this rule opposed private business has been postponed to a Friday, not for the purpose of being taken, but in order to allow time for considering the choice of a day in the following week to which, if still opposed, the business may be postponed (23 and 24 July 1903, 28 and 29 April 1904 (*g*)).

Bills for confirming provisional orders and certificates may be set down by the Chairman of Ways and Means for half-past seven like private bills in any order which he directs and even before private bills (S.O. 174); and motions relating to such bills are treated in the same way as motions relating to private bills.

To suit the convenience of the House or to forward government business orders have been made varying the time at which opposed private business may be taken. It has been ordered to be taken immediately after government business, if that business should be disposed of before the hour for opposed private business (*h*), or at a Saturday sitting at the end of Government business (*i*). On one occasion it was ordered to be taken on the last two days allotted to the business of supply at the conclusion of that business, instead of at the hour for opposed private business, and was allowed to be proceeded with, though opposed, and was exempted from interruption under S.O. No. 1 (*j*). A similar arrangement has been made to enable it to be

(*f*) H. C. Deb. (1909) 7, c. 1119.

(*g*) Private Business (1903) 727, 729; *ibid.* (1904) 347, 351.

(*h*) C. J. (1914-16) 40; *ibid.* (1916) 13; *ibid.* (1917-18) 11; *ibid.* (1918) 6; *ibid.* (1919) 24, 325; *ibid.* (1920) 390.

(*i*) C. J. (1908) 512.

(*j*) C. J. (1911) 403, 409.

taken at the end of government business (*k*); and at the end of the proceedings ordered to be concluded at a certain time under an order of the House prescribing the method and times for bringing certain business to a conclusion (*l*). On a day on which opposed private business is to be taken at half-past seven the sitting may, if other business has been prematurely concluded, be suspended till that hour. But if the House should have adjourned before that hour, private business not reached on that account is set down at the time of unopposed private business at the next sitting of the House. (Brecon and Merthyr Tydfil Junction Railway Bill, C. J. (1914) 234, 246; Taf Fechan Water Supply Bill [Lords], *ibid.* (1921) 329, 334; Buckhaven and Leven Gas Commission Order Confirmation Bill, *ibid.* (1922) 213, 221.)

### 3. PRESENTATION OF PUBLIC PETITIONS

When private business is concluded, the Speaker calls on those Members to present petitions who have intimated to him their desire to do so, or who have entered their names on a list headed "Public Petitions" which is placed on the table of the House. The Member so called upon may not address the House (nor may any other Member speak except to raise a point of order) but he may read the prayer of the petition and make a statement as to the parties from whom it comes, the number of its signatures and its material allegations. If a petition apparently conforms to the rules and practice of the House it is brought to the table by the direction of the Speaker and may be read by the Clerk at the table if required (S.Os. Nos. 75 and 76).

In practice this formal procedure is comparatively seldom employed—and only, it may be said, for the sake of the additional measure of prominence which it confers—as the presentation of a petition may be effected by simply depositing it at any time during the sitting of the House in a bag placed behind the chair for the purpose. In whichever way it is presented a petition which is *prima facie* in order is recorded by an entry in the "Votes and Proceedings" of the House; and a note appended thereto of any petition which is obviously irregular and not noticed.

Petitions which relate to a motion upon the notice paper or to an order of the day may be presented when the mover of the motion is called on, or when an order of the day is read for the first time (*m*), but not after the question consequent thereon has been proposed, or on resuming an adjourned debate. On one occasion the motion made upon an order of the day was temporarily withdrawn in order to enable a Member to present a petition relating thereto (*n*).

The rules governing the preparation of public petitions and other matters connected therewith are stated on pp. 794-804.

### 4. MOTIONS FOR UNOPPOSED RETURNS

Immediately after the presentation of any public petitions is the proper time for moving motions for returns (of accounts and other documents)

(*k*) C. J. (1914) 418; *ibid.* (1920) 52.

(*l*) C. J. (1906) 255.

(*m*) C. J. (1896) 85, 87.

(*n*) C. J. (1856) 131.

of which notice stands upon the notice paper for the day, and which the Minister responsible for the government department concerned has signified his readiness to render. Such motions are also made by Ministers, and in that case may be made either at this time or at any other convenient opportunity. A Member may, if duly authorized, make such a motion on behalf of another Member, in his absence. Before an unopposed return can be moved, the Speaker should be assured that the department which furnishes the return has notified its consent; and if an order for a return is obtained as unopposed, without such consent, the order may be struck out of the minute books by the Speaker's direction, or on a subsequent day the order may be read and discharged.

To such an extent is the conventional rule accepted, namely, that a motion for a return which is granted by the Minister responsible for the department concerned ought not to be opposed by any other Member, that such opposition has been overruled by the Speaker (Parl. Deb. (1889) 338, c. 1232; *ibid.* (1895) 33, c. 895; *ibid.* (1898) 53, c. 466; *ibid.* (1905) 142, c. 1038; *ibid.* (1906) 154, c. 197; H. C. Deb. (1909) 5, c. 1162; *ibid.* (1922) 157, c. 1232). In refusing to accept an objection to a motion for an unopposed return, the Speaker has suggested that the Member who objected should bring pressure upon the department with a view to the order being rescinded (H. C. Deb. (1914-15) 77, c. 588).

For the rules governing the form of such motions and for restrictions upon the right to move for other than public documents, see pp. 253-256.

## 5. QUESTIONS TO MINISTERS (OR OTHER MEMBERS)

Immediately after the conclusion of private business, or any of the two last-mentioned items the Speaker calls upon the Member, the notice of whose question stands first on the paper, to put his question. As previously stated, the proceedings on questions standing upon the notice paper must not begin later than three o'clock or continue after a quarter to four (S.O. No. 7), even when questions have been interrupted, *e.g.*, by a Royal Commission (*o*).

### NOTICE OF QUESTIONS

Notice of a question to a Minister or other Member is usually placed upon the notice paper, unless the question relates to a matter of urgency or to the course of public business. The custom, formerly in vogue, of giving notice of questions by reading the question aloud, is no longer allowed, unless the consent of the Speaker in the case of any particular question has been previously obtained. Notice of a question is given by delivering the terms thereof in writing to the clerks at the table during the sitting of the House. A Member's name must be written on the copy so delivered. Copies of questions transmitted by post are treated as having been handed in during the sitting in the course of which they are received, and, by direction of the Speaker, the name of the Member submitting a question otherwise than in person must be in his own handwriting (*p*). A Member who

(*o*) H. C. Deb. (1935-6) 310, c. 2948. See also *ibid.* (1942-43) 387, c. 1779-80.

(*p*) H. C. Deb. (1931-32) 249, c. 36.

desires an oral answer\* to his question must distinguish it by an asterisk, and the notice of any such question must appear at latest on the notice paper circulated on the day before that on which an answer is desired.

This last requirement was temporarily suspended by general consent for the latter part of session 1914 (*g*), and in session 1914-16 and the four following sessions special arrangement was made for cases of adjournments of the House from Thursday till the following Monday or Tuesday (*r*).

For special arrangements during the war of 1939-45, see Emergency Procedure, p. 819.

#### SPEAKER'S CONTROL OF QUESTIONS

Irregularities in a notice of a question are dealt with in the manner adopted regarding notices of motions (see p. 379) and are corrected at the table, or reserved for consideration.

The Speaker's responsibility in regard to questions is limited to their compliance with the rules of the House. Responsibility in other respects rests with the Member who proposes to ask the question (*s*). A notice of a question asking for a return and setting out its details is put upon the paper as a notice of motion for a return (*t*). On many occasions the Speaker has stopped a Member asking by private notice a question that had been refused at the table, or asking the parts of questions struck out at the table (*u*) or taking the opportunity when raising a point of order to read out a question which has been refused at the table (*a*). The refusal of a question at the table cannot be made the subject of debate (*b*).

Questions of excessive length have not been permitted (*c*). The Speaker also has called the attention of the House to an alteration made by his direction in a question (*d*).

#### LIMITATION OF NUMBER OF ORAL QUESTIONS

The number of questions for oral answer which may be asked by a Member on the same day is limited to three (*e*). The number, formerly unlimited, was first fixed at eight (*f*) and then at four (*g*). If more than the number of questions permitted appear on the paper, the excess is answered in the same manner as non-oral questions (see p. 340), even if the excess is due to the postponement of questions owing to the absence of a Minister on a previous day (*h*). The clerks at the table further examine questions standing in the Order Book for the following day and may postpone excess questions to suitable dates or remove the

(*g*) H. C. Deb. (1914) 66, c. 50.

(*r*) C. J. (1914-16) 97; *ibid.* (1916) 13; *ibid.* (1917-18) 11; *ibid.* (1918) 6; *ibid.* (1919) 24.

(*s*) Parl. Deb. (1880) 252, c. 1903, etc.

(*t*) Parl. Deb. (1901) 89, c. 988.

(*u*) Parl. Deb. (1881) 265, c. 879, etc.

(*a*) H. C. Deb. (1928) 225, c. 785.

(*b*) Parl. Deb. (1903) 127, c. 711.

(*c*) Parl. Deb. (1887) 318, c. 42.

(*d*) Parl. Deb. (1861) 161, c. 342.

(*e*) H. C. Deb. (1920) 125, c. 1050, 1225-27.

(*f*) H. C. Deb. (1909) 1, c. 1108, etc.

(*g*) H. C. Deb. (1919) 112, c. 1382, etc.

(*h*) H. C. Deb. (1917-18) 94, c. 1294.

asterisk and transfer them to the non-oral list. A Member cannot withdraw an earlier question in order to ask the fourth standing in his name (*i*); nor can a question in excess of the permitted number be asked, if an earlier question has been postponed at the request of the Minister to whom it was addressed (*j*) or if time allows questions that have not been asked (owing to the absence of the Members who gave notice of them) to be called a second time (*k*) (see p. 820).

There is no limit to the number of questions to be answered in writing which may be asked on the same day.

#### PERSONS TO WHOM QUESTIONS MAY BE ADDRESSED

**Questions to the Speaker.**—Questions dealing with matters within the jurisdiction of the Speaker should be addressed to the Speaker by private notice. No written or public notice of questions addressed to the Speaker is permissible; nor can any appeal be made to the Chair by a question, save on points of order as they arise, or on a matter which urgently concerns the proceedings of the House for which he is responsible (*l*).

**Questions to Ministers.**—Questions addressed to Ministers should relate to the public affairs with which they are officially connected, to proceedings pending in Parliament, or to matters of administration for which they are responsible. Within these limits an explanation can be sought regarding the intentions of the Government, but not an expression of their opinion upon matters of policy. A question should be addressed to the Minister who is primarily responsible, and misdirected questions are transferred by the clerks at the table on the notification of the departments concerned (*m*).

The Speaker has ruled that the Prime Minister cannot be asked questions about statements made by other Ministers in the country (*n*), but a question as to whether a statement made by a Cabinet Minister represents the policy of the Government is in order (*o*). The Speaker has also refused to allow questions as to whether the Government proposed by resolution to put a close to a stage of a bill (*p*), and as to the time at which a Minister would move the closure (*q*).

An answer to a question cannot be insisted upon, if the answer be refused by a Minister on the ground of the public interest (*r*) nor can the question be replaced upon the notice paper (*s*). The refusal of a Minister to answer a question on this ground cannot be raised as a matter of

(i) H. C. Deb. (1920) 130, c. 1079, etc.

(j) H. C. Deb. (1925) 185, c. 1295.

(k) H. C. Deb. (1921) 142, c. 149, etc.

(l) Parl. Deb. (1859) 155, c. 870, etc.

(m) H. C. Deb. (1929) 213, c. 613; *ibid.* (1930) 235, c. 2055; *ibid.* (1941-2) 382, c. 859.

(n) H. C. Deb. (1918) 104, c. 484.

(o) H. C. Deb. (1924) 170, c. 45, 473.

(p) Parl. Deb. (1893-94) 15, c. 1782.

(q) Parl. Deb. (1901) 89, c. 1061; *ibid.* (1905) 141, c. 781.

(r) Parl. Deb. (1872) 209, c. 466; *ibid.* (1883) 283, c. 1350, etc.

(s) Parl. Deb. (1884) 285, c. 875; *ibid.* (1898) 55, c. 770.

privilege (*t*), while a motion for the adjournment of the House under S.O. No. 8 (see p. 343) to discuss a similar refusal has been ruled out of order (*u*).

Questions may be asked of the Ministers who are the confidential advisers of the Crown, regarding matters relating to those public duties for which the sovereign is responsible. It has been ruled that the Prime Minister cannot be interrogated as to the advice that he may have given to the sovereign with regard to the grant of honours (*a*), or the ecclesiastical patronage of the Crown (*b*). A question with regard to the exercise of the prerogative of mercy in connection with persons sentenced to capital punishment is not in order (*c*).

No question can be put which brings the name of the sovereign or the influence of the Crown directly before Parliament, or which casts reflections upon the sovereign (*d*) or the royal family. A question has been altered by the Speaker's direction on the ground that the name of the sovereign should not be introduced to affect the views of the House (*e*).

**Questions to unofficial Members.**—Questions addressed to unofficial Members must relate to a bill, motion, or other matter connected with the business of the House in which such Members are concerned (*f*); though a question addressed to a Member, the leader of the Opposition, inquiring the course he intended to adopt regarding a motion by the Government, was not allowed (*g*). The former usage, by which questions were addressed to Members who were placed on royal commissions, or were trustees of the British Museum, if relevant to their official duties or position, is not in accordance with modern practice (*h*). This usage, which formerly included members of the Metropolitan Board of Works, was not extended to members of the London County Council (*i*). Questions were not allowed by the Speaker to be put to the Chairman of the Road Board, when he was a Member of the House, but were addressed to the Secretary to the Treasury (*j*).

A question to an ex-minister with regard to transactions during his term of office has been ruled out of order (*k*). Although questions may not be asked regarding statements made by Members outside the House (*l*), a question to an unofficial Member has been permitted regarding a circumstance alleged to have happened outside Parliament; because it impugned

(*t*) Parl. Deb. (1901) 89, c. 322.

(*u*) H. C. Deb. (1909) 2, c. 200.

(*a*) Parl. Deb. (1907) 178, c. 61; *ibid.* (1908) 190, c. 1338; H. C. Deb. (1922) 155, c. 1842.

(*b*) Private Ruling, 9 March 1923.

(*c*) H. C. Deb. (1921) 139, c. 845; *ibid.* (1921) 142, c. 1523. See also Parl. Deb. (1887), 319, c. 253, 1103; *ibid.* (1889) 340, c. 128.

(*d*) Parl. Deb. (1867-68) 192, c. 711; *ibid.* (1887) 318, c. 1373; *ibid.* (1896) 39, c. 1378.

(*e*) Notices of Motions, sess. 1912-13, pp. 3891, 3944.

(*f*) Parl. Deb. (1864) 174, c. 1914; H. C. Deb. (1941-2) 381, c. 215, etc.

(*g*) Parl. Deb. (1880) 253, c. 974.

(*h*) H. C. Deb. (1916) 88, c. 35; *ibid.* (1917-18) 95, c. 1322.

(*i*) Parl. Deb. (1889) 334, c. 712.

(*j*) H. C. Deb. (1911) 22, c. 1200.

(*k*) Parl. Deb. (1906) 158, c. 217.

(*l*) Parl. Deb. (1872) 209, c. 141, etc.

the veracity of a Member in respect to a statement made by him in the House (*m*).

#### RULES OF ORDER REGARDING FORM AND CONTENTS OF QUESTIONS

The purpose of a question is to obtain information (*n*) or press for action, and it should not be in effect a short speech, or limited to giving information, or framed so as to suggest its own answer or convey a particular point of view. The facts on which a question is based may be set out briefly, provided the Member asking it makes himself responsible for their accuracy (*o*), but extracts from newspapers or books, quotations from speeches, etc., are not admissible (*p*). Where the facts are of sufficient moment the Speaker has required *prima facie* proof of their authenticity. A question which publishes the names of persons or statements not strictly necessary to render the question intelligible will be refused a place on the notice paper (*q*).

#### EXAMPLES OF INADMISSIBLE QUESTIONS

Besides these general rules the following types of question may be enumerated as being out of order, viz :

- (1) Seeking an expression of opinion (*r*), or containing arguments, expressions of opinion, inferences, or imputations (*s*).
- (2) Containing epithets (*t*), or rhetorical, controversial, ironical, or offensive expressions (*u*).

When a Member in asking a supplementary question has made offensive insinuations, the Speaker has declined to call upon him to ask the next question upon the paper which stood in his name (*a*).

- (3) Referring to debates or answers to questions in the current session (*b*).

On one occasion a Member has been allowed to ask a Minister for the reference to a statement made by him in debate (*c*). A question as to an alleged omission of part of an answer from the official report has been allowed (*d*). The Speaker has drawn attention to the inconvenience of questions relating to statements made in the House of Lords (*e*), and exception has been taken to a reference to debates in the Lords during the current session as an answer to a question (*f*). Disrespectful phrases with regard to the action of that House have been ruled out of order (*g*).

- (4) Criticizing decisions of the House of Commons.

(*m*) Parl. Deb. (1887) 313, c. 1249.

(*n*) Parl. Deb. (1893-94) 9, c. 1620, etc.

(*o*) Parl. Deb. (1882) 270, c. 1132, etc.

(*p*) Parl. Deb. (1907) 172, c. 225, etc.

(*q*) Parl. Deb. (1880) 253, c. 1631; H. C. Deb. (1912-13) 46, c. 1005.

(*r*) H. C. Deb. (1914-16) 173, c. 14.

(*s*) Parl. Deb. (1864) 175, c. 100, etc.

(*t*) H. C. Deb. (1920) 130, c. 1255; *ibid.* (1920) 132, c. 226.

(*u*) Parl. Deb. (1860) 160, c. 1827, etc.

(*a*) H. C. Deb. (1917-18) 95, c. 2290.

(*b*) Parl. Deb. (1871) 207, c. 1883, etc.

(*c*) Parl. Deb. (1893-94) 15, c. 1744.

(*d*) H. C. Deb. (1917-18) 93, c. 341.

(*e*) Parl. Deb. (1906) 164, c. 334.

(*f*) H. C. Deb. (1918) 105, c. 2294.

(*g*) Parl. Deb. (1906) 167, c. 1863.

- (5) Seeking information about matters which are in their nature secret, such as decisions or proceedings of the Cabinet (including the Committee of Imperial Defence and other committees of the Cabinet), advice given to the Crown by Law Officers, etc.
- (6) Reflecting on the decision of a court of law, or being likely to prejudice a case which is under trial (*h*).

The Speaker has ruled privately that questions relating to a sentence passed by a judge, and to the circumstances under which rules of court were made and issued by the Lord Chancellor, were inadmissible.

- (7) Addressed to a court official or referring to the action of a court official (*e.g.* the action of the Lord Chamberlain with regard to the licensing of plays (*i*)).
- (8) Dealing with matters referred to a royal commission (*j*), or with matters before a parliamentary committee, or with matters within the jurisdiction of the chairman of a select committee or the authorities of the House (*k*). No question can be asked regarding proceedings in a committee which have not been placed before the House by a report from the committee (*l*).
- (9) Anticipating discussion upon an order of the day (*m*), or a motion (notice of which has already been given) which must be decided without debate.
- (10) Suggesting amendments to bills, or asking for information which should be moved for as a return.
- (11) putting to a Minister a question for which another Minister is more directly responsible, or asking one Minister to influence the action of another.
- (12) Dealing with the action of a Minister for which he is not responsible to Parliament (*n*).

In 1924 a question asking the Attorney-General whether he had communicated with certain members before deciding to withdraw a prosecution was disallowed privately by the Speaker.

- (13) Seeking an expression of opinion on a question of law, such as the interpretation of a statute, or of an international document, a Minister's own powers, etc. (*o*).
- (14) Asking for the solution of a hypothetical proposition (*p*).
- (15) Asking whether statements in the Press, or of private individuals, or unofficial bodies are accurate (*q*).
- (16) Reflecting on the character or conduct of those persons whose conduct may only be challenged on a substantive motion (*r*) (see pp. 374-5).

The Speaker has ruled that a question relating to communications alleged to have passed between a Member and a Minister ought not to have appeared

(*h*) Parl. Deb. (1901) 96, c. 1365; *ibid.* (1906) 167, c. 148; *ibid.* (1907) 177, c. 1614.

(*i*) Private ruling of 23 July 1934.

(*j*) Private ruling of 25 May 1936.

(*k*) Parl. Deb. (1897) 46, c. 784; *ibid.* (1897) 47, c. 1314.

(*l*) Parl. Deb. (1883) 280, c. 1147; H. C. Deb. (1930-31) 237, c. 1926, 1967.

(*m*) Parl. Deb. (1876) 228, c. 1557, 1766; *ibid.* (1896) 40, c. 1152.

(*n*) Private ruling of 4 August 1924.

(*o*) Parl. Deb. (1897) 47, c. 1184; *ibid.* (1901) 89, c. 1056; *ibid.* (1905) 143, c. 36.

(*p*) Parl. Deb. (1898) 63, c. 705; *ibid.* (1907) 172, c. 1544.

(*q*) Parl. Deb. (1881) 260, c. 1132; *ibid.* (1893-94) 10, c. 674; H. C. Deb. (1914-16) 75, c. 330; *ibid.* (1922) 153, c. 2364.

(*r*) Parl. Deb. (1872) 210, c. 39; *ibid.* (1906) 157, c. 487; H. C. Deb. (1913) 55, c. 2024, 2057; *ibid.* (1920) 128, c. 408.



on the notice paper (s) ; while a question on the paper referring to the time occupied by two Members' speeches was, in deference to the Speaker's views, not asked (t).

- (17) Reflecting on the conduct of persons otherwise than in their official or public capacity.
- (18) Referring discourteously to a friendly foreign country (u).
- (19) Seeking information about the internal affairs of foreign countries or the Dominions (a). The Speaker has ordered the removal from the paper of a question referring to the speech of a Dominion Minister (b).
- (20) Dealing with matters transferred to the Government of Northern Ireland (c) or the legislative assemblies constituted under the Government of India Act (d).
- (21) Raising matters under the control of local authorities (e.g. provincial police, certain aspects of education, public health, and other matters) (e).
- (22) Raising matters under the control of bodies or persons not responsible to the Government, such as banks, the money market, the Stock Exchange, joint stock companies, railways, employers' organizations, trade unions, etc. (f).
- (23) Requiring information set forth in accessible documents (such as statutes, treaties, etc.) or in ordinary works of reference (and not coming within the official knowledge or duties of the Minister) (g).
- (24) Seeking, for purposes of argument, information on matters of past history.
- (25) Raising questions of policy too large to be dealt with in the limits of an answer to a question.
- (26) Repeating in substance questions already answered or to which an answer has been refused.
- (27) Multiplied with slight variations on the same point.
- (28) Being trivial, vague, or meaningless.

#### TIME FOR ASKING QUESTIONS

After private business has been disposed of, and not later than three o'clock on Mondays, Tuesdays, Wednesdays, and Thursdays, the Speaker calls on the Members who have given notices of questions to which oral answers are desired. If, owing to a Royal Commission, the commencement of questions is delayed, they are taken as soon as possible after the Speaker's return (h). On several occasions questions have been deferred

(s) Parl. Deb. (1896) 40, c. 1561.

(t) 23 June 1904.

(u) Private ruling of 24 June 1924.

(a) Parl. Deb. (1908) 190, c. 61; H. C. Deb. (1911) 30, c. 1283; *ibid.* (1922) 153, c. 1522, 1526, 1534-36; Private ruling of 15 March 1928; H. C. Deb. (1929) 232, c. 1932.

(b) "Notices of Motions," 1928-29, p. 686.

(c) H. C. Deb. (1922) 151, c. 1084; *ibid.* (1923) 162, c. 2246; *ibid.* (1923) 163, c. 1623.

(d) H. C. Deb. (1921) 138, c. 899, 1147, 1614.

(e) H. C. Deb. (1917-18) 93, c. 1613.

(f) H. C. Deb. (1929-30) 233, c. 246.

(g) Parl. Deb. (1896) 39, c. 1156; *ibid.* (1901) 90, c. 207; H. C. Deb. (1914) 66, c. 162, 269, 939; *ibid.* (1924) 169, c. 838.

(h) Parl. Deb. (1902) 109, c. 1358.

*en bloc* (i). On Fridays questions for oral answer have been asked, but Ministers are under no obligation to be present to answer them (k), and as S.O. No. 2 provides no place for questions on Fridays, the practice, except for private notice questions (see p. 340), has been held to be irregular. As the House stands adjourned from Friday to Monday under S.O. No. 23, no questions can be put down for any Saturday.

The time limit for questions has been extended from a quarter to four till four o'clock for the remainder of the session (l). 'The quarter to four rule was waived by general consent on 27 August 1914 (m); but on subsequent occasions the Speaker has refused to allow this to be done without an order of the House (n). On many occasions, when the House has met at eleven o'clock, questions have not been allowed to be asked after twelve o'clock (o). Questions which have not been answered in consequence of the absence of the Minister to whom they are addressed may be answered after a quarter to four, if the Minister be then present, and questions not answered, when called a second time, on account of a Minister's absence, may be put down for a subsequent day (p). A question standing on the paper cannot be asked after a quarter to four o'clock solely because it is urgent (q). But a question upon the paper which was not reached by a quarter to four o'clock has been allowed to be asked, as it was urgent and of sufficient importance (r) or because it was urgent and related to an order of the day (s). The motion for the adjournment of the House at the conclusion of business cannot be used for the purpose of asking a question not reached by a quarter to four o'clock (t).

#### MANNER OF ASKING QUESTIONS

As each Member is called, he rises to ask the question standing in his name by reading its number in the question paper; but if the Member responsible for a question does not answer to the Speaker's call, a Minister may rise and make such statement upon the question as the public interest demands (u). When a Member stated that it was not his intention to ask a question standing in his name, as the subject of it had been discussed in debate on a previous day, the Speaker refused to allow the Minister concerned to answer it (a).

In like manner, a Member, other than the Member in whose name a question stands, which contains allegations affecting personal character or conduct and requires therefore prompt reply, may ask for an answer to

(i) 13 February 1893, Parl. Deb. (1893) 8, c. 1241; 20 May 1898, *ibid.* (1898) 58, c. 118; 7 and 14 December 1916, H. C. Deb. (1916) 88, c. 792, 795.

(k) Parl. Deb. (1917-18) 91, c. 994, 995, 1440; H. C. Deb. (1917-18) 94, c. 1294; *ibid.* (1924) 169, c. 389.

(l) 25 October 1916, C. J. (1916) 218.

(m) H. C. Deb. (1914) 66, c. 166.

(n) H. C. Deb. (1919) 116, c. 575; *ibid.* (1919) 121, c. 628; *ibid.* (1924) 169, c. 531.

(o) C. J. (1923) 161, 325; *ibid.* (1924) 148, etc.

(p) Parl. Deb. (1902) 110, c. 701.

(q) H. C. Deb. (1921) 134, c. 32.

(r) H. C. Deb. (1929-30) 231, c. 1248.

(s) Parl. Deb. (1908) 188, c. 738.

(t) Parl. Deb. (1905) 143, c. 1310.

(u) Parl. Deb. (1900) 84, c. 286.

(a) H. C. Deb. (1910) 17, c. 20.

the question (*b*) or a statement may be made thereon, although the question is not asked (*c*). Another Member may ask a question for an absent Member, at his request, but not until the questions standing in the names of Members who are present have been answered (*d*). Without such request, however, a question should not be asked by a Member who has not given notice of the question (*e*). When a Minister in answering a question has referred to the answer to be given to a question which had not been asked, he has been allowed to give the answer to that question in spite of the absence of the Member in whose name it stood (*f*).

#### QUESTIONS ASKED BY PRIVATE NOTICE

Questions which have not appeared on the paper, but which are of an urgent character and relate either to matters of public importance (*g*), or to the arrangement of business, may be taken after a quarter to four o'clock, provided they have been submitted to the Speaker (*h*) and have been accepted by him as satisfying the conditions imposed by S.O. No. 7 (3), and provided notice has been given to the Minister concerned. A question cannot be asked by private notice in order to anticipate a question of which notice has been given (*i*). Questions which are asked without appearing on the paper are governed by the same rules of order as questions of which notice has been given (*k*).

#### ANSWERS TO QUESTIONS

**Printed answers.**—If a Member does not distinguish his question by an asterisk, or if he or any other Member deputed by him is not present to ask it, or if it is not reached by a quarter to four o'clock, the Minister to whom it is addressed causes an answer to be printed in the Official Report of the Parliamentary Debates, unless the Member has signified his desire to postpone the question before the interruption of questions at a quarter to four o'clock.

Printing in the Official Report was substituted for printing and circulation with the Votes by an amendment of S.O. No. 7 on 28 September 1915 (*l*). Until that date the answers had been printed in the Official Report since its institution in 1909 as well as being circulated with the Votes.

If a Member, having placed notices of questions upon the paper, ceases to be a Member of the House, answers to his questions should not be printed (*m*).

(*b*) Parl. Deb. (1886) 304, c. 437; H. C. Deb. (1924) 172, c. 1360.

(*c*) H. C. Deb. (1914-16) 72, c. 1624.

(*d*) H. C. Deb. (1920) 128, c. 858.

(*e*) Parl. Deb. (1883) 279, c. 1756; *ibid.* (1907) 178, c. 57; H. C. Deb. (1924) 172, c. 1834.

(*f*) H. C. Deb. (1923) 163, c. 1609.

(*g*) H. C. Deb. (1935-36) 309, c. 42; *ibid.* (1936-37) 326, c. 1487.

(*h*) H. C. Deb. (1917-18) 94, c. 595; *ibid.* (1920) 132, c. 942, 1636.

(*i*) H. C. Deb. (1918) 106, c. 1125. See also *ibid.* (1918) 107, c. 172; *ibid.* (1924) 169, c. 266; *ibid.* (1943-44) 399, c. 1203-4.

(*k*) Parl. Deb. (1892) 3, c. 861; H. C. Deb. (1921) 147, c. 1028; *ibid.* (1929-30) 224, c. 1777.

(*l*) C. J. (1914-16) 246.

(*m*) H. C. Deb. (1912-13) 42, c. 2552.

**Oral answers.**—An answer should be confined to the points contained in the question, with such explanation only as renders the answer intelligible, though a certain latitude is permitted to Ministers of the Crown (*n*); and supplementary questions, without debate or comment, may, within due limits, be addressed to them, which are necessary for the elucidation of the answers that they have given (*o*). The Speaker has called the attention of the House to the inconvenience that arises from an excessive demand for further replies (*p*), and, to hinder the practice, he has frequently felt it necessary to call upon the Member, in whose name the next question stands upon the notice paper, to put his question (*q*), and has for the same reason asked Members not to ask supplementary questions (*r*) and has suggested that lengthy answers should be circulated with the Official Report instead of being given orally (*s*). A supplementary question may refer only to the answer out of which it immediately arises (*t*), must not be read (*u*) and must not refer to a previous answer or be addressed to another Minister (*a*).

The Speaker has also requested that questions on purely local matters (*b*) or dealing with individual cases (*c*) should not be put down for oral answer. A question fully answered, whether orally or in print, cannot be renewed (*d*), nor can a question which one Minister has refused to answer be addressed to another Minister (*e*).

## 6. INTRODUCTION OF NEW MEMBERS AND TAKING THE OATH

A Member who has been returned at a bye-election is normally introduced immediately after Questions in order that he may be in a position to take part in public business as early as possible.

It is usual for Members who have not yet taken the oath, to sit below the bar (*f*); and care must be taken that they do not, inadvertently, take a seat within the bar, by which they would render themselves liable to the penalties and disqualifications imposed by statute (see p. 272).

If a Member be elected at a bye-election, the Clerk of the Crown sends to the Clerk of the House a certificate of the return received in the Crown Office; and the Member must obtain a certificate from the Public Bill

(*n*) Parl. Deb. (1861) 161, c. 497; *ibid.* (1901) 90, c. 88; *ibid.* (1908) 195, c. 262.

(*o*) Parl. Deb. (1872) 211, c. 1994; *ibid.* (1901) 91, c. 103; H. C. Deb. (1914-16) 73, c. 41; *ibid.* (1921) 142, c. 1055.

(*p*) Parl. Deb. (1884) 290, s. 686; *ibid.* (1892) 5, c. 551; H. C. Deb. (1924) 169, c. 1507.

(*q*) Parl. Deb. (1888) 323, c. 374; *ibid.* (1905) 142, c. 937; H. C. Deb. (1920) 125, c. 1023.

(*r*) H. C. Deb. (1920) 130, c. 886.

(*s*) H. C. Deb. (1924) 172, c. 1980.

(*t*) Parl. Deb. (1900) 82, c. 12.

(*u*) H. C. Deb. (1935-36) 313, c. 995.

(*a*) Parl. Deb. (1901) 91, c. 103.

(*b*) H. C. Deb. (1923) 165, c. 657.

(*c*) H. C. Deb. (1924) 169, c. 1519.

(*d*) Parl. Deb. (1875) 225, c. 792, 952, 1142; H. C. Deb. (1918) 108, c. 1979.

(*e*) Parl. Deb. (1895) 34, c. 1547.

(*f*) When, 18 May 1849, notice was taken that strangers were present, B. C. R. retained his seat below the bar, although he had not taken the oath; and Mr. B. C. R. was present below the bar, during many divisions, while forbidden to take the oath.

Office of the receipt of that certificate for production at the table, before the Clerk of the House will administer the oath.

In the case of a Member who was sworn at the table before his return was received by the Clerk of the Crown, it was questioned whether the oath which he had taken before the receipt of the return had been duly taken. A committee which was appointed to inquire into the matter reported that the non-return of the indenture to the Crown Office cannot affect the validity of the election or the right of a person duly elected to be held a member of the House, but recommended a strict adherence to the practice of requiring the production of the usual certificate, or, in cases in which that may be from accidental circumstances impossible, of requiring satisfactory proof of the person's title to be admitted as a Member (*g*).

During the session of 1889, the return of a Member for Kennington, on Friday, 15 March, was not delivered at the Crown Office until the following Monday evening at nine o'clock. On the meeting of the House on Monday, 18 March, notice was taken that the return was not in the hands of the Clerk of the Crown; and the Speaker informed the House that he would ascertain from the Clerk of the Crown the circumstances of the case, and that action should be taken thereon, if necessary. The delay in the delivery of the return had arisen in the post-office; and the Member took the oath during a subsequent sitting. (Parl. Deb. (1889) 334, c. 53.)

Members returned upon new writs issued after the general election, take the oath or make their affirmation in the same manner as those returned at a general election (see p. 271). By S.O. No. 83, Members may take and subscribe the oath at any time during the sitting before the orders of the day and notices of motions have been entered on [the usual time], or after they have been disposed of, so long as no debate or business is interrupted (*h*).

On the occasion of a Member coming to the table to be sworn, 26 July 1858, a Member rose to speak on a point of order, but Mr. Speaker maintained "that the taking of his seat by a Member is a matter of privilege, and ought not to be interrupted by any discussion whatever" (Parl. Deb. (1857-58) 151, c. 2106; see also *ibid.* (1872) 210, c. 252).

Under the resolution of 23 February 1688, "in compliance with an ancient order and custom, they are introduced to the table between two Members, making their obeisances as they go up, that they may be the better known to the House" (*i*): but this practice is not observed in regard to Members who, having been chosen at a general election, have established their claim to a seat by an election petition (*h*); for they are supposed to have been returned at the beginning of the Parliament, when no such introduction is customary.

On 18 February 1875, Dr. Kenealy, a new Member, came to the table to be sworn, without the introduction of two Members. The Speaker acquainted him with the order of the House, and, refusing to hear any comments from him, directed him to withdraw; whereupon the House resolved that the order be dispensed with, on this occasion, C. J. (1875) 52; Parl. Deb. (1875) 222, c. 486. On a similar occasion, however, in the case of Mr. McIntyre, on

(*g*) H. C. 256 (1847-48), case of Mr. Hawes.

(*h*) Parl. Deb. (1907) 169, c. 159 and 315.

(*i*) C. J. (1688-93) 34.

(*k*) 2 Hatsell, 85, n.

17 April 1945, the House, on a division, refused to dispense with the order, and on the following day the new Member was introduced in the customary way (H. C. Deb. (1944-45) 410, c. 34 and 222).

## 7. MOTIONS FOR THE ADJOURNMENT OF THE HOUSE BEFORE THE COMMENCEMENT OF PUBLIC BUSINESS

A motion for the adjournment of the House, moved as a substantive motion, *i.e.* independently and not in the course of discussion upon another question (see p. 382), is peculiarly adaptable to the purpose of obstructing the pre-arranged programme of business of the sitting, as its employment in the past shows. Its unrestricted use is now reserved for the Government (see p. 285). Its use by unofficial Members is limited by S.O. No. 8 in point of time to the period between questions and the commencement of public business, and in subject matter to the raising of what is accepted by the Speaker as a definite matter of urgent public importance. A motion for the adjournment of the House for the purpose of discussing a definite matter of urgent public importance may only be made on one of the first four days of the week (not on Friday or Saturday) (*l*), when all the questions to Members have been disposed of, and before the commencement of public business. The Member who desires to make such motion rises in his place and asks leave to move the adjournment of the House. A notice in writing of the definite matter of urgent public importance which he proposes to discuss must be supplied to the Speaker (*m*). If the leave of the House be unanimously given, or if, when the Speaker desires those Members who support the motion to rise in their places, forty or more Members rise accordingly, the motion stands over till half-past seven on the same day, when it has precedence of all other business.

Such a motion has been ordered to be taken at the conclusion of government business, if such business should be concluded before 8.15 (the hour to which the motion at that time stood over), or at the conclusion of government business (C. J. (1918) 6; *ibid.* (1919) 24, 325; *ibid.* (1920) 390. See also p. 456).

On 10 May 1916, a motion for the adjournment of the House for which leave had been obtained was not moved as the Government agreed to afford facilities for a motion on the same subject on the following day (C. J. (1916) 77, 78; H. C. Deb. (1916) 82, c. 631, 673, 694, 760; see also C. J. (1916) 215, 257; H. C. Deb. (1916) 86, c. 958; *ibid.* (1916) 88, c. 1573). A motion has also not been moved as the Speaker informed the House at a quarter-past eight o'clock (the hour to which the motion at that time stood over) that he thought that he had been wrong in leaving the matter to the decision of the House (C. J. (1920) 464, 465; H. C. Deb. (1920) 135, c. 2226).

If, however, fewer than forty Members, and not less than ten, have risen when called upon by the Speaker, the Member may, if he thinks fit, demand a division, upon question put forthwith, to determine whether such motion may be made (*n*).

(*l*) H. C. Deb. (1918) 104, c. 2008.

(*m*) Parl. Deb. (1882) 275, c. 407; H. C. Deb. (1925) 180, c. 1091.

(*n*) Parl. Deb. (1882) 275, c. 409; C. J. (1893-94) 349, 599; Parl. Deb. (1893) 13, c. 907; C. J. (1902) 233; *ibid.* (1912-13) 225; *ibid.* (1917-18) 124, 194; *ibid.* (1920) 338, 370.

Such a division does not come within the provisions of S.O. No. 31, which empowers the Speaker to call on Members to rise in their places if he thinks a division is unnecessarily claimed (o).

#### RESTRICTIONS ON ADJOURNMENT MOTIONS

The failure to secure the requisite support for the motion is held to be a refusal of leave by the House and to prevent the same matter being raised again under S.O. No. 8 during the same session (p).

It has also been decided that not more than one motion for adjournment under the standing order can be made during the same sitting of the House (q).

It has also been ruled that a matter, specifically debated on a motion for adjournment under the standing order, cannot be raised again in the same form during the same session (r).

It is a question for the decision of the Speaker whether a matter, to discuss which it is proposed to move the adjournment of the House under S.O. No. 8, complies with the provisions of that standing order. In accepting or rejecting such a motion the Speaker is, as in the case of a motion alleging breach of privilege (see p. 356), doing no more than deciding whether there is in his view a *prima facie* case of urgency, leaving the final decision to the House.

The general meaning of the standing order may be best set out in the words of Mr. Speaker Peel. "What I think was contemplated was the occurrence of some sudden emergency either in home or foreign affairs. But I do not think it was contemplated . . . that a question of very wide scope, which would demand legislation to deal with it in any effective manner, should be the subject of discussion. . . ." (s).

The interpretation of the standing order has been further clarified by a series of rulings, and the effect of these rulings may be set out as follows: To be in order, the matter raised by a motion for the adjournment under S.O. No. 8 must be (1) definite, (2) urgent, (3) of public importance; (4) involve the administrative responsibility of the Government, and (5) conform with the rules applicable to all motions for the adjournment whether under S.O. No. 8 or not.

These conditions, together with references to some of the rulings imposing them, are set out below.

(1) **Matter must be definite.**—The matter raised by the motion must be

(a) a single specific matter;

See Parl. Deb. (1887) 320, c. 571; *ibid.* (1888) 325, c. 347; H. C. Deb. (1932) 261, c. 32. Two closely connected matters have been allowed in the same motion (Parl. Deb. (1898) 53, c. 1536).

(o) Parl. Deb. (1893) 13, c. 908.

(p) Speaker's ruling (private), 10 April 1891; Parl. Deb. (1893) 11, c. 453; H. C. Deb. (1917) 94, c. 1136; *ibid.* 98, c. 508; *ibid.* (1920) 129, c. 41. Also Private ruling, 2 April 1894.

(q) Parl. Deb. (1893) 11, c. 459; H. C. Deb. (1921) 147, c. 1932.

(r) Parl. Deb. (1889) 337, c. 1697-1703; *ibid.* (1900) 86, c. 222-24; H. C. Deb. (1909) 5, c. 237; *ibid.* (1923) 162, c. 2250.

(s) Parl. Deb. (1894) 23, c. 367.

(b) not couched in general terms or covering a great number of cases ;  
See Parl. Deb. (1895) 33, c. 1614; H. C. Deb. (1934) 290, c. 1347. Other examples of matters disallowed on this ground are:—the financial relations between Great Britain and Ireland (private ruling 22 February 1898); an inquiry into the Department of Education for Ireland (Parl. Deb. (1901) 96, c. 444); lawless conditions in Ireland (H. C. Deb. (1910) 18, c. 840).

(c) not offered when facts are in dispute or before they are available ;  
See H. C. Deb. (1919) 122, c. 221; *ibid.* (1930) 245, c. 1099; *ibid.* (1938-9) 342, c. 393.

(d) not one involving hypothetical circumstances ;

See H. C. Deb. (1932) 272, c. 1795.

(e) not importing an argument.

See H. C. Deb. (1926) 197, c. 40; *ibid.* (1931) 247, c. 165.

(2) Matter must be urgent.—The matter raised must be

(a) *prima facie* urgent ;

See H. C. Deb. (1929) 233, c. 42; *ibid.* (1931) 256, c. 675; a comparatively distant future event is not urgent (Parl. Deb. (1905) 146, c. 497).

(b) of recent occurrence and raised without delay ;

(i) The fact that a grievance is *continuing* is not sufficient if it is not of recent occurrence (Parl. Deb. (1900) 86, c. 93-94; H. C. Deb. (1921) 147, c. 1186; *ibid.* (1923) 162, c. 877; *ibid.* (1923) 164, c. 220; *ibid.* (1933) 283, c. 699).

(ii) If the facts have only been recently revealed, that does not make the occurrence recent (*ibid.* (1920) 131, c. 1204).

(iii) If the matter is not raised at the earliest opportunity, it fails in urgency (Parl. Deb. (1902) 113, c. 633-34; *ibid.* (1905) 146, c. 59; *ibid.* (1905) 149, c. 389; *ibid.* (1905) 150, c. 939; H. C. Deb. (1926) 197, c. 1621). But postponement, without prejudice to urgency, has been allowed (see (d) below).

(c) the motion has been refused when an ordinary parliamentary opportunity will occur shortly or in time ;

(i) When the matter could be raised on the Estimates (Parl. Deb. (1889) 339, c. 1669; *ibid.* (1904) 135, c. 807; H. C. Deb. (1909) 4, c. 1213; *ibid.* (1926) 198, c. 1045; *ibid.* (1928) 214, c. 1924).

(ii) When the Vote on Account or a stage of a Consolidated Fund Bill was to be taken in the next few days (Parl. Deb. (1901) 280, c. 2597).

(iii) When debate on adjournment for the holidays was due shortly (Parl. Deb. (1908) 189, c. 965; H. C. Deb. (1910) 15, c. 960; *ibid.* (1933) 284, c. 1300).

(iv) When it was capable of being dealt with on the adjournment after eleven o'clock (H. C. Deb. (1933) 277, c. 1703).

(d) a motion has been allowed to be postponed without prejudice to its claim to raise a matter of urgency ;

(i) In order to await information as to the facts (H. C. Deb. (1920) 134, c. 179, 352, 552; *ibid.* (1922) 151, c. 1762; *ibid.* (1923) 161, c. 1767, 2107; *ibid.* (1931) 256, c. 825, 1032).

(ii) To meet exigencies of public business (H. C. Deb. (1921) 138, c. 1132, 1611).

(iii) But postponement for the sake of preserving the precedence of a private Member's motion has been refused (H. C. Deb. (1922) 153, c. 1347).



(3) **Matter must be of public importance.**—The standing order prescribes that the matter raised must be of public importance, but this question has generally been left to the House to decide, and the Speaker has seldom intervened solely on this ground. The following instances appear to be the only rulings disallowing motions on this as the sole or main ground :

(i) The proposed eviction of an employee by the Congested Districts Board (H. C. Deb. (1913) 54, c. 1246).

(ii) The suppression of a newspaper (*ibid.* (1917) 96, c. 581).

(iii) The Government's decision in regard to the Schneider Trophy Race (*ibid.* (1931) 247, c. 179).

(iv) The alleged reproof by an inspector of schools of a schoolgirl's essay expressing love of country (*ibid.* (1935) 304, c. 2491).

(4) **Matter must involve administrative responsibility of the Government.**—Motions have been disallowed because the matter raised was one

(a) for which another authority was immediately responsible, *e.g.* :

(i) A Dominion Government or a Colonial Government having responsibility in the matter raised (Parl. Deb. (1907) 173, c. 1084; H. C. Deb. (1913) 55, c. 39, 242; *ibid.* (1922) 154, c. 1894; *ibid.* (1922) 155, c. 191).

(ii) A local authority (Parl. Deb. (1902) 114, c. 603; H. C. Deb. (1922) 159, c. 1187, 1498; *ibid.* (1924) 170, c. 2129).

(iii) A provincial police authority (Parl. Deb. (1905) 150, c. 1183; H. C. Deb. (1924) 175, c. 1967).

(iv) A statutory authority (Port of London Authority, H. C. Deb. (1912) 41, c. 816).

(v) A judicial authority (H. C. Deb. (1923) 164, c. 1288).

(vi) A foreign Government (H. C. Deb. (1920) 126, c. 1815; *ibid.* (1920) 130, c. 587; *ibid.* (1929) 233, c. 974).

(b) for which no administrative authority was responsible ;

(i) Performing animals (H. C. Deb. (1924) 174, c. 2330).

(ii) Industrial disputes (H. C. Deb. (1923) 162, c. 33; *ibid.* (1923) 166, c. 450).

(iii) Disputes and litigation between landlords and tenants (Parl. Deb. (1902) 110, c. 602-604).

(iv) Newspaper articles (H. C. Deb. (1920) 135, c. 2118, 2226).

(v) Resolution of members of Metropolitan Police (H. C. Deb. (1919) 115, c. 596).

(c) because any power that a Minister possessed had already been exercised.

Sec H. C. Deb. (1929-30) 233, c. 974.

Motions have been disallowed because the matters raised by them involved no more than the *ordinary administration of the law* :

(i) Review of the habitual legal action of a department (Parl. Deb. (1900) 85, c. 976-80). (In this case what was disallowed was *debate* going outside terms of matter and dealing with action of department long before matter arose.)

(ii) Treatment of women prisoners in Holloway (H. C. Deb. (1909), 8, c. 523).

(iii) Police stopping deputation of ex-service men at end of Westminster Bridge (H. C. Deb. (1920) 126, c. 261).

(iv) Postponement of execution of a prisoner (H. C. Deb. (1920) 135, c. 930).

(v) Adoption of recommendation by Trade Facilities Committee, to give a guarantee (H. C. Deb. (1923) 165, c. 1186).

(vi) Order by Treasury on recommendation by Import Duties Advisory Committee (H. C. Deb. (1931-32) 265, c. 43).

(vii) Imposition of embargo on Russian imports (following Act to give power) (H. C. Deb. (1932-33), 277, c. 27).

(viii) Alleged illegal action of department (because "courts are open") (H. C. Deb. (1926) 191, c. 1938, cf. *ibid.* (1935) 299, c. 2086).

(ix) Exercise of discretion under statutory powers:

Aliens (H. C. Deb. (1924) 179, c. 355).

Loans to Boards of Guardians (H. C. Deb. (1925) 185, c. 1729).

Refusal to appoint court of inquiry in marine wireless dispute

(H. C. Deb. (1926) 191, c. 1547).

(The grounds for disallowing the motions included in this group seem to have been extended since 1920. The "ordinary administration of the law" meant in the earliest cases was rather the administration of *justice*, i.e. trial and punishment.)

(5) **Matter must conform to general rules applicable to all motions for the adjournment.**—The only difference between a motion for the adjournment under S.O. No. 8 and any other motion for the adjournment of the House (except when such a motion is moved on another question) (see p. 382) is that the former is given precedence at a stated time if it fulfils certain conditions. Consequently, the rules that apply to adjournment motions, generally, apply equally to this particular type. The position was explained clearly by Mr. Speaker Brand in 1882 immediately after the adoption of the standing order. In reply to a question whether the rule against anticipation would apply to a motion under the standing order, he said that

"With respect to the resolution lately passed by the House he apprehended that all that was done by the resolution was this—that whereas formerly any hon. Member might, if he pleased, move the adjournment of the House, now that privilege or power was restricted under the conditions laid down by the resolution (t)."

Most of these rules are so well known and so frequently applied that it will be unnecessary to do more than set them out briefly with a reference to the leading ruling.

(a) A motion for the adjournment has been held to be out of order if the matter it raises *anticipates*—

(i) an order of the day or notice on the Paper (Parl. Deb. (1888) 328, c. 411; H. C. Deb. (1924) 179, c. 991).

(ii) a question on the Paper (*ibid.* (1923) 161, c. 2526);

(iii) a verbal notice of a motion for an early day, 28 June 1900, private ruling; of matter to be raised on adjournment at end of sitting, H. C. Deb. (1912) 40, c. 979, 1151; of a statement about business, Parl. Deb. (1890) 345, c. 738; of a notice to take an Estimate, *ibid.* (1900) 86, c. 93-94);

(t) Parl. Deb. (1882) 274, c. 1319; *ibid.* (1882) 275, c. 26.

(iv) a bill pending in the Lords (Newfoundland Fisheries Bill [Lords] 1891, private ruling);

(v) a matter referred to, and not yet reported by, a select committee (H. C. Deb. (1920) 130, c. 397, 612).

(b) The matter raised must not be *sub judice*.

See Parl. Deb. (1904) 138, c. 788; H. C. Deb. (1935) 299, c. 204).

(c) It must not involve legislation.

See Parl. Deb. (1894) 23, c. 367; H. C. Deb. (1926) 199, c. 1267).

(d) It should not be a matter which could only be raised by a substantive motion or an address (see p. 375), e.g. :

(i) Action of Lord Chancellor (H. C. Deb. (1924) 175, c. 940).

(ii) Action of the Speaker (*ibid.* (1925) 184, c. 1391).

(iii) Action of the Chairman of Ways and Means (Parl. Deb. (1901) 90 c. 699, 831).

(iv) Matter touching the prerogative of mercy.

(e) Matters provided for under practice and the standing orders.

(i) Complaint of breach of privilege (Parl. Deb. (1859) 154, c. 445).

(ii) Right of the Government to arrange business (H. C. Deb. (1921) 142, c. 840).

(iii) Question of order.

(f) The matter raised must be framed in proper language.

See H. C. Deb. (1928) 222, c. 1090.

The offer of a motion for the adjournment of the House under S.O. No. 8 is often preceded by a question, the Member who asks it not intending to proceed with the motion if the matter at issue is satisfactorily disposed of by the question. But it is not a sufficient ground for such a motion to allege merely that the Minister's answer is "unsatisfactory" (u). Nor is the refusal of a Minister to answer a question ground for such a motion (a).

#### RELEVANCY IN DEBATE ON A MOTION UNDER S.O. No. 8

The debate on such a motion (when it comes on in due course at half-past seven) is confined strictly to the matter with regard to which leave to move the adjournment of the House was obtained. No matter can be raised incidentally which would have been out of order if it had been included in the terms of the motion, when leave was asked, on any of the grounds mentioned in the preceding section. In other respects debate on such a motion is subject to the ordinary rules of debate on motions for the adjournment of the House.

### 8. BUSINESS TAKEN AFTER THE OFFER OF ANY MOTION FOR ADJOURNMENT UNDER S.O. No. 8

#### (1) MOTIONS FOR LEAVE OF ABSENCE

Leave of absence does not appear to have been required by, or given to, a Member since 1872. Like the old method of enforcing attendance by

(u) H. C. Deb. (1929-30) 230, c. 1304.

(a) H. C. Deb. (1909) 2, c. 200.

a call of the House (see p. 223) it has become unnecessary since more effective methods of securing attendance of Members have been developed by party organizations in the House. But the formal granting of leave of absence by the House is, perhaps, not entirely obsolete—at least in one connection. Unless leave of absence has been obtained, a Member cannot excuse himself from attending on a committee, when his attendance, as in the case of a private bill committee, is made compulsory by standing or other orders (b).

## (2) GIVING NOTICE OF MOTIONS AND HOLDING OF BALLOT

The procedure in debating a motion is described in Chapter XVII. In this section an account is given of the rules which govern the giving notice of a motion, whether orally or by insertion in the notice paper; the length of notice which is permissible; the manner in which precedence between the motions and other business of private Members is determined by ballot; the relation between the terms of a notice and the terms of the corresponding motion, as moved, or proposed to be moved, irregularities in the form of a notice; and, finally, the circumstances in which the obligation to give notice is insisted upon, dispensed with, or waived.

**Oral and written notice of motion.**—If oral notice is given of the intention to move a motion, the proper time for this is after any motion for leave of absence has been disposed of.

But such notice is now seldom given orally in the House because, by a practice dating from the beginning of last century, the terms of a substantive motion should be printed on the notice paper and such printed notice is ordinarily sufficient (c). Accordingly the usual method of giving notice of a motion is to deliver its terms in writing at any time during the sitting of the House to the clerks at the table who see that it is duly printed. A vestige of the old method of giving oral notice persists in the procedure connected with the ballot, and also in the practice whereby Ministers, before the debate on the address in reply to the King's speech, give notice of the more important bills which they intend to introduce during the session. In this latter case notice is given for the purpose of ensuring that the debate on such bills shall not be anticipated (see p. 378) through their subject matter being canvassed in the course of the debate on the Address. No debate is permitted on an oral notice at the time when it is given; and members of the Government can claim priority in giving notice whenever they make announcements relating to public business. A substantive motion, as a rule, must be moved by the Member in whose name the notice stands (see p. 365).

A notice orally given holds good for the day on which it is given and cannot be withdrawn. It must be supplemented by a written notice handed in at the table during the sitting, if it is to continue effective. A written notice becomes effective only when it appears on the notice paper (*i.e.* the Blue Paper, see p. 247) on the day following that on which it was handed in at the

(b) S.O. 122.

(c) 3 and 27 February 1806, Colchester, ii. 35, 41, Parl. Deb. (1806) 6, c. 229; see also 2 March 1836, Parl. Deb. (1836) 31, c. 1154; 9 July 1861, *ibid.* (1861) 164, c. 630. For earlier cases, see 21 Parl. Hist. 147, 622, 885, 888.

table and continues effective as long as it remains on the paper (Parl. Deb. (1893) 13, c. 1078; H. C. Deb. (1912) 40, c. 980, 1151). A notice cannot be withdrawn from the notice paper of the day or the current issue of the order book in the course of a sitting (Parl. Deb. (1892) 4, c. 189; *ibid.* (1897) 46, c. 134; H. C. Deb. (1929-30) 230, c. 1494); but by an intimation to the clerks at the table it can be withdrawn from a future issue of the order book. A Member may not keep the same notice standing in the order book for two different days; nor may more than six names appear in the order book in connection with one notice (Mr. Speaker's rulings (private) 5 April 1905; 18 July 1917.)

**Extent of Notice.**—No notice of motion for a day on which notices are entitled to precedence may be given for any day beyond the second day on which such notices are entitled to precedence (S.O. No. 5). Notices of motions have precedence over the orders of the day on Wednesdays before Easter. Following this method of computation, no notice can be given before Easter for a Wednesday beyond the second Wednesday that occurs after the day on which the notice is given in the House. As this rule only applies to days on which motions have precedence, there is nothing to prevent a Member giving notice of a motion for a distant day on which motions have no precedence, or even giving notice without fixing a day at all—"giving notice for an early day," as it is called.

**Terms of notice of motion.**—Notice of a motion may be given in the first instance in general terms, but in that case a notice of the motion, precisely as it is intended to be proposed (*d*), should be delivered at the table some days before, or, at latest, during the sitting preceding the day appointed for the motion (*e*). This practice also applies to notices of amendments on going into Committee of Supply, which in this respect are treated as motions (see p. 691). In the case of charges affecting personal character or conduct, however, no form of notice is permitted, save a specific notice of a substantive motion, which distinctly formulates the charges (see p. 375).

**Ballot for notices of motions, etc.**—In view of the limited time available for private members' business (see pp. 280-3), precedence between Members who desire to move motions is conferred by means of the ballot (*f*). As the same method is adopted in the case of private members' bills and the motions offered by them on going into Committee of Supply (see p. 691) ballots on such business are included in the description which follows of the procedure in connection with the holding of a ballot. Ballots are taken usually:

(1) *in the House*, (*a*) for private Members' motions—these are held at the beginning of the session for motions to be moved on the two following Wednesdays, and, thereafter, on each successive Wednesday

(*d*) Parl. Deb. (1871) 205, c. 774.

(*e*) Vote of thanks for services in India, 8 February 1858, Parl. Deb. (1857-58) 148, c. 865.

(*f*) The precedence so conferred has been over-ruled on one occasion (in favour of a Member who had surrendered his right of priority on an earlier day in deference to the general desire of the House) by an order made by the House at the commencement of public business, C. J. (1924-25) 180; H. C. Deb. (1924-25) 181, c. 2081; *ibid.* (1924-25) 182, c. 1094, 1224, 2226. The motion thus preferred was printed in italics at the head of the notices of motions. Notices of Motions (1924-25), p. 1522.

during the period when private Members have precedence for motions to be moved on that day fortnight ; and (b) for motions to be moved as amendments on going into Committee of Supply on each of the four main branches of the estimates—this ballot is held after Christmas, shortly before the presentation of the estimates.

If both ballots fall due on the same day, only one ballot is taken for both purposes, 26 February, 1906 ; 21 February, 1923, &c.

(2) *in a committee room*, for private Members' bills—this ballot is held at the beginning of the session.

Orders are agreed to, usually on the second day of every session, providing for the dates on which the various ballots are to be taken and also against notices being given before such dates (g).

Any Member who desires to ballot enters his name on the ballot paper, which is placed in the " No " division lobby for that purpose on any day on which a ballot is to be taken—in the case of the ballots for bills at the beginning of the session, on the two previous days and not on the day on which it is to be taken. Notice may be given on behalf of a Member at that moment absent from the House ; and, in that case, the Member who gives the notice enters upon the paper the name of the Member for whom he acts, answers for him when his name is called, and delivers at the table the written notice in his behalf, but he cannot when so acting enter his own name on the ballot paper (h). The name or signature of a Member must not appear more than once upon the ballot paper.

*Manner of taking a ballot in the House.*—Numbers are assigned by the ballot paper to the names or signatures of the Members intending to give notice, and slips of paper bearing corresponding numbers are folded up and placed in the ballot box. When the Speaker orders the ballot to be taken, the clerk assistant, having shuffled the slips of paper, draws them out, one by one, and calls the number that has been drawn out. The Speaker thereupon announces the name of the Member to whose signature that number is attached upon the ballot paper ; and, following the Speaker's call, the Member, or another Member authorized by him on his behalf (i), in his turn, rises and states the notice which he gives (k), and the day that he has chosen for the motion. In order to secure the precedence obtained by the ballot he must hand in a copy of his notice at the table on the same day before the rising of the House (l). The written notice should not be wider in scope than the oral notice (though the terms need not necessarily be the same). When the written notice has been more limited in its scope than the oral notice, the former has been ruled to be the effective notice. Names of seconder or supporters may not be added to ballot notices, as the ballot gives precedence solely to the Member who has secured a place. When a sufficient number amply to cover each motion day has been called, other Members whose names were not drawn may

(g) C. J. (1936-37), 10.

(h) Parl. Deb. (1843) 68, c. 1002 ; *ibid.* (1901) 92, c. 589 ; *ibid.* (1902) 102, c. 1271.

(i) H. C. Deb. (1911) 23, c. 2010 ; *ibid.* (1922) 152, c. 1349 ; *ibid.* (1924) 171, c. 245. *ibid.* (1924) 172, c. 1370, 1559, 1672 ; *ibid.* (1924-25) 179, c. 1218 ; *ibid.* (1924-25) 180, c. 186 ; *ibid.* (1927) 202, c. 762.

(k) A Member cannot give alternative notices, H. C. Deb. (1927) 202, c. 763.

(l) Parl. Deb. (1893) 13, c. 1078.

give further notices in the hope of finding an opportunity to move their motions.

*Manner of taking a ballot for bills at commencement of the session.*—A ballot to determine the precedence of the bills of unofficial Members throughout the session (or, more precisely, of the dates for their second readings) is regularly taken at the commencement of the session (*m*). This ballot has been held out of the House since 1894 (*n*). Members desiring to take part in this ballot are required to sign the ballot paper on the first or second day of the session during the sitting of the House. The ballot is taken on the morning of the third day at a time and place fixed by the Speaker, and is conducted by the Chairman of Ways and Means. During the sitting of the House on the same day Members must hand in at the table the titles of the bills that they propose to present (*o*). The notices of the bills to be presented are arranged upon the notice paper in the order determined by the ballot. On the fourth day of the session the bills are presented in the order of the ballot at the commencement of public business. When presenting his bill a Member fixes the day for its second reading (see p. 487). The power of Members in signing the ballot paper is restricted in the manner already described above.

### (3) MINISTERIAL STATEMENTS AND OBITUARY SPEECHES

Explanations are made to the House on behalf of the Government regarding their domestic and foreign policy; stating the advice they have tendered to the sovereign regarding their retention of office or the dissolution of Parliament; announcing the legislative proposals they intend to submit to Parliament; or the course they intend to adopt in the transaction and arrangement of public business. These explanations are now usually elicited by arrangement in reply to a question. But the older practice under which they were volunteered spontaneously is still sometimes followed (*p*). In that case they are taken in the order of business indicated on p. 326, and prior notice to Mr. Speaker is necessary (*q*).

An explanation has been permitted after motions at the commencement of public business had been disposed of and before the Speaker called upon the Clerk to read the orders of the day (*r*).

Ministerial explanations have also been made during debate on motions that afforded an opportunity for the statement, for instance, on motions

(*m*) In sessions 1914-16 to 1918, 1922 (II), 1928-29, 1931-32, 1934-35, and 1939-40 to 1945-46, no ballot was held as precedence was given to government business throughout the session, C. J. (1914-16) 9; *ibid.* (1916) 7, 37; *ibid.* (1917-18) 8; *ibid.* (1918) 6; *ibid.* (1922) 353; *ibid.* (1928-29) 10, 210; *ibid.* (1931-32) 22, 62; *ibid.* (1934-35) 7; *ibid.* (1939-40) 7, etc. In session 1919, 1924-25, 1929-30, and 1935-36 precedence was given to government business during the earlier portion of the session, and the ballot was held later, C. J. (1919) 24, 68; *ibid.* (1924-25) 27, 52; *ibid.* (1929-30) 26, 65; *ibid.* (1935-36) 24, 58; see also *ibid.* (1936-37) 67.

(*n*) C. J. (1894) 9; *ibid.* (1895) 9; *ibid.* (1903) 9.

(*o*) A notice of the presentation of a bill by an unofficial Member handed in on the first or second day of a session is not printed, H. C. Deb. (1914-15) 68, c. 39.

(*p*) It is a well-established practice, H. C. Deb. (1938-39) 350, c. 2174-6; *ibid.* 352, c. 173-4; *ibid.* (1941-42) 380, c. 1983-5, etc.

(*q*) H. C. Deb. (1942-43) 392, c. 394.

(*r*) H. C. Deb. (1916) 84, c. 573.

for Committee of supply and an adjournment of the House (*s*). A statement has been permitted between the orders of the day after five o'clock on a Friday (*t*).

As no question is before the House, debate on such statements is irregular (*u*). At this time also ceremonial speeches have been allowed. Originally confined to commemorating on their deaths the public services of distinguished statesmen who were or had been members of the House, in recent times the practice has been extended to other occasions of rejoicing or mourning (*a*). Such speeches are usually made by the leader of the House and supported by brief speeches from leaders of parties not in office. Debate on a ministerial statement has been raised upon a motion for adjournment, moved for that purpose (*b*).

Explanation by a Member of the circumstances which have caused his resignation of an office in the government is usually made immediately before the commencement of public business.

The following examples may be given: Lord Henry Lennox, *Parl. Deb.* (1876) 230, c. 1481; Mr. W. E. Forster, *ibid.* (1882) 269, c. 106; Mr. Mundella, *ibid.* (1894) 24, c. 1191; Mr. Hayes Fisher, *ibid.* (1903) 120, c. 1254; Mr. Wyndham, *ibid.* (1905) 145, c. 1352; Mr. Pease, *H. C. Deb.* (1914-16) 72, c. 7; Sir Edward Carson, *ibid.* (1914-16) 74, c. 1812; Mr. Churchill, *ibid.* (1914-16) 75, c. 1499; Mr. Birrell, *ibid.* (1916) 82, c. 32; Major-General Seely, *ibid.* (1919) 121, c. 373; Dr. Addison, *ibid.* (1921) 144, c. 1488; Mr. Eden and Viscount Cranborne, *ibid.* (1937-38) 332, c. 45 and 50. Explanations of this nature have been made during a debate upon a motion to which such statements were relevant; Mr. Courtney, *Parl. Deb.* (1884-85) 294, c. 659; Mr. Chamberlain and Sir George Trevelyan, *ibid.* (1886) 304, c. 1104, 1181; Lord George Hamilton, *ibid.* (1904) 131, c. 417; Colonel Seely, *H. C. Deb.* (1914) 60, c. 841; Sir John Simon, *ibid.* (1914-16) 77, c. 962; Mr. Austen Chamberlain, *ibid.* (1917-18) 95, c. 2211, and upon a motion for the adjournment of the House, Mr. Henderson, *ibid.* (1917-18) 97, c. 909; Mr. Montagu, *ibid.* (1922) 151, c. 2296.

Though debate must not arise upon the explanation, statements pertinent thereto on behalf of the Government have been permitted.

#### (4) PERSONAL EXPLANATION

In regard to the explanation of personal matters, the House is usually indulgent; and will permit a statement of that character to be made without any question being before the House. Such explanations are made in the order indicated on p. 326 before the commencement of public business (*c*), but no debate should ensue thereon. On 30 November 1915 a Minister at the close of a personal explanation moved the adjournment of the House in order to afford an opportunity for debate (*d*).

(s) *Parl. Deb.* (1867) 185, c. 1309, 1339.

(t) *Parl. Deb.* (1908) 185, c. 1067.

(u) *H. C. Deb.* (1939-40) 361, c. 796-7; *ibid.* (1941-2) 376 c. 1698-9.

(a) *H. C. Deb.* (1941-42) 376 c. 322; *ibid.* (1942-43) 386, c. 48 and c. 1059-63; *ibid.* 390, c. 1948-1952.

(b) *Parl. Deb.* (1884) 290, c. 696; *ibid.* (1905) 150, c. 70; *H. C. Deb.* (1914) 65, c. 1833; *ibid.* (1916) 84, c. 1244.

(c) *Parl. Deb.* (1905) 146, c. 302; *H. C. Deb.* (1912-13) 45, c. 1486, 1532.

(d) *C. J.* (1914-16) 296; *H. C. Deb.* (1914-16) 76, c. 549.



General arguments or observations beyond the fair bounds of explanation or too distinct a reference to previous debates are out of order (*e*) ; though a Member has been permitted by the Speaker to make, at a subsequent sitting, an explanation regarding alleged misrepresentation in debate (*f*), or in a question to a Minister (*g*).

An explanation of reflections made upon a Member in a capacity other than that of a Member of Parliament has been ruled out of order (*h*). The indulgence of a personal explanation should be granted with caution ; for, unless discreetly used, it is apt to lead to irregular debates (*i*). A personal explanation has been permitted to be made by a Member on behalf of another who was abroad (*k*), or was ill (*l*), or was suspended from the service of the House (*m*). Explanations have also been allowed on behalf of gentlemen not being Members, whose conduct had been reflected upon in debate (*n*) ; though permission to make an explanation of this nature has been refused by the Speaker (*o*).

#### (5) APPOINTMENT OF "MONEY COMMITTEES"

A position is assigned at this stage of business or (if it is more convenient) at the conclusion of public business to motions that the House will on a future day resolve itself into committee for the purpose of considering a proposed charge upon public funds (see p. 658). These motions, which are undebatable, and do not require notice, are now in most cases superseded by the alternative procedure provided by S.O. No. 69.

#### (6) CONSIDERATION OF LORDS' AMENDMENTS OR MESSAGE

Lords' Amendments to Bills, when such amendments are verbal, or, if more than verbal, are not of material importance or numerous or contentious, and which are accordingly not printed (see p. 546), may be taken before the commencement of public business in the order indicated on p. 326. Such amendments have also been taken before questions or after the conclusion of public business, when such a course has been more convenient.

Similarly, a Lords message relative to the destruction of the Commons chamber by enemy action was considered forthwith (H. C. Deb. (1940-41) 371, c. 1268).

#### (7) RAISING OF A MATTER OF PRIVILEGE

The position in the order of business assigned (see p. 326) as most convenient for the raising of matters of privilege does not apply to all

(*e*) Lord C. Paget, Parl. Deb. (1864) 173, c. 1913.

(*f*) Parl. Deb. (1846) 87, c. 480 ; H. C. Deb. (1911) 21, c. 1066.

(*g*) H. C. Deb. (1912-13) 45, c. 1532.

(*h*) H. C. Deb. (1909) 2, c. 1931.

(*i*) Mr. Duncombe, Parl. Deb. (1859) 153, c. 334 ; Mr. Sheridan and the Chancellor of the Exchequer, *ibid.* (1864) 174, c. 191 ; Mr. Lowe, Lord Robert Cecil, Mr. Disraeli, and Mr. Walter, *ibid.* (1864) 174, c. 1203 ; Mr. Baillie Cochrane, the Chancellor of the Exchequer, and Mr. Roebuck, *ibid.* (1865) 178, c. 372 ; *ibid.* (1882) 269, c. 106-32. See also motion to express regret that imputations made against a Member had not been withdrawn on the occasion of a personal explanation, *ibid.* (1864) 174, c. 306.

(*k*) Parl. Deb. (1860) 157, c. 718.

(*l*) H. C. Deb. (1914-16) 75, c. 1487.

(*m*) H. C. Deb. (1912-13) 41, c. 3203.

(*n*) Case of Dr. Beke, Parl. Deb. (1867-68) 190, c. 422 ; case of Mr. Reed, *ibid.* (1872) 210, c. 403.

(*o*) Parl. Deb. (1882) 269, c. 1095.

matters which fall under the designation of privilege in its widest sense. Some matters which are ultimately based on a privilege of the House occupy a different position in the order of business. For instance, the moving of a new writ to fill a casual vacancy (which is one of the means by which the House exercises the privilege of making provision with respect to its own proper constitution) is taken at the very beginning of a sitting (see p. 327). Other privileges, the enforcement of which is regulated in part by standing orders, are dealt with as so provided. For instance, breaches of order in the House are dealt with and punished, if necessary, as they arise; and the right to exclude strangers may be exercised at any time under the procedure laid down by S.O. No. 89 (see p. 226). A motion to rescind an order for the suspension of a Member is not treated as a matter of privilege, and consequently is not entitled to the priority which would enable it to be taken at this place in the order of business (*p*). Disagreement with a ruling by the Speaker cannot be raised as a matter of privilege (*q*) nor alleged obstruction (*r*) nor the disallowance of a question (*s*), nor the refusal of a Minister to answer a question (*t*). A breach of the financial privileges of the Commons by the House of Lords, if, as is usually the case, it occurs in relation to a bill is raised in the course of proceedings on the bill.

If an alleged case of a breach of the financial privileges of the Commons is raised independently of any proceedings before the House, the question whether it can be treated as a matter of privilege is not of importance if, as normally happens it is raised by a Minister, for the Government's control over the time of the House ensures for it due precedence. Such a matter has however been raised as a matter of privilege by a Minister at a time when the Government's control of the order of business was less complete than it is at present. On 6 July 1860 Lord Palmerston proposed as a matter of privilege resolutions affirming the privileges of the Commons in view of the rejection by the Lords of the Paper Duties Bill (*u*). On 5 June 1899 a complaint made by an unofficial Member of the form of the message from the Queen delivered to the House of Lords on 2 June was treated as a question of privilege, and he was permitted to move that the action of the Lord Chancellor in presenting to the House of Lords a message from Her Majesty recommending that she should be enabled to grant to Lord Kitchener a sum of £30,000 was a departure from ancient constitutional precedents, contrary to the usage of Parliament and a gross breach of the privileges of the Commons (*a*). The issue by a public department to its own officers of instructions for administering a statute which were alleged to have the effect of imposing taxation not warranted by law has been refused precedence. Such action by a department could be remedied by a court of law (*b*).

The place in the order of business assigned to matters of privilege is reserved in practice for a special class of privilege business which is mainly confined to complaint of breach of privilege. (The matters covered by this description are set out and explained in Chapter VIII.)

(*p*) Parl. Deb. (1887) 313, c. 1124.

(*q*) Parl. Deb. (1881) 258, c. 8-14.

(*r*) Parl. Deb. (1878) 239, c. 671.

(*s*) Parl. Deb. (1878) 240, c. 651.

(*t*) Parl. Deb. (1901) 89, c. 322.

(*u*) Parl. Deb. (1860) 159, c. 1384.

(*a*) C. J. (1899) 234.

(*b*) H. C. Deb. (1908) 194, c. 168.

Among other matters, besides complaints of breach of privilege, which may be taken at thistime, may be mentioned proceedings for the expulsion of a Member, and on notice of the disqualification of a Member.

Certain urgent matters, such as assaults upon or insults to Members, or the communication to a newspaper of a memorandum explanatory of a bill which is to be introduced the next day, after the memorandum has been presented and ordered to be printed, but before it is available for Members (c), if they should occur during a sitting of the House, may be raised at once in spite of the interruption of a debate or other proceedings (except a division in progress). A complaint on such a matter is entertained by the House as soon as it is raised, but if complaint is made in committee the chairman reports progress and the Speaker resumes the chair. The chairman has refused to interrupt committee proceedings because he thought the matter raised "was not one which obviously concerned the privileges of the House" (d).

The interruption of business has been refused because immediate action by the House was not needed (e).

Opposition by a direct vote given against a motion involving a matter of privilege is not essential: these motions can be set aside indirectly, as, for instance, by an amendment proposing that the House should pass to the appointed business of the sitting (f), or by the adoption of the previous question (g).

**Speaker's discretion in permitting matter to be raised.**—As a motion taken at the time for matters of privilege is thereby given precedence over the pre-arranged programme of public business, the Speaker requires to be satisfied, both that there is a *prima facie* case that a breach of privilege has been committed; and also that the matter is being raised at the earliest opportunity. If he is not so satisfied when the circumstances are first brought to his attention privately, he may inform the Member that he is not entitled to raise the matter as a question of privilege, or he may allow him to make a statement with a view to ascertaining whether or not a *prima facie* case can be made out. This latter course is also taken when for some reason a preliminary explanation has not been given to the Speaker. The right of making complaint of a breach of privilege is open to any member of the House, and, even if an individual Member alone is affected, is not confined to that Member.

It has often been laid down that the Speaker's function in ruling on a claim of breach of privilege is limited to deciding the formal question whether the case conforms with the conditions which alone entitle it to take precedence of the notices of motions and orders of the day standing in the order paper of public business; and does not extend to deciding the question of substance, whether a breach of privilege has in fact been committed—a question which can only be decided by the House itself (h). The conditions with which a claim of privilege must comply in order to

(c) H. C. Deb. (1909) 9, c. 2423.

(d) H. C. Deb. (1909) 9, c. 2370.

(e) H. C. Deb. (1913) 51, c. 720.

(f) C. J. (1880) 57; *ibid.* (1884) 167; *ibid.* (1887) 358; *ibid.* (1888) 420; *ibid.* (1894) 33; *ibid.* (1900) 179; *ibid.* (1907) 328.

(g) C. J. (1880) 57; *ibid.* (1893-94) 631; *ibid.* (1905) 3. See also 2 Cav. Deb. 385.

(h) H. C. Deb. (1917) 93, c. 1963; Parl. Deb. (1887) 314, c. 1717.

be accorded precedence are those mentioned above (1) a *prima facie* case of breach of privilege must be made out (2) the matter must be raised at the earliest opportunity (i). The scope of these conditions can be best explained by setting out a few examples.

(1) *A prima facie case of breach of privilege must be made out.*—In judging whether a *prima facie* case of breach of privilege has been made out the Speaker excludes any matters which are otherwise properly to be dealt with under the practice or standing orders of the House (see p. 355). Though a matter itself may be privileged, it does not follow that further proceedings arising out of it are also privileged, e.g. a motion to add members to a select committee on a matter of privilege after it had been nominated (k) was held not to be a question of privilege.

When the House has decided upon the principle raised by a privilege motion, the same principle cannot be brought forward as privilege, in another form, during the same session (l).

Other limitations on the right to raise matters as questions of privilege have been laid down by the Speaker (m). See also Chapter VIII, p. 132.

(2) *The matter must be raised at the earliest opportunity.*—A matter of privilege which claims precedence over other public business should be a subject which has recently arisen, and which calls for the immediate interposition of the House (n). The latter condition, that a matter to secure precedence must be one of urgency, was applied in the older rulings (o). But this condition seems to have been waived, and later Speakers have satisfied themselves with insisting that a matter should be raised at the earliest opportunity (p).

A matter which occurred during the recess was refused precedence as a matter of privilege because it was not raised on the first day of the session (q).

Similarly a matter concerning an article in a newspaper published on 6 May was refused precedence because it was not raised till the 14th (r) and a speech reported on a Saturday because it was not raised until the following Tuesday (s). On the other hand an article published on Wednesday morning was allowed to be raised on Thursday (t).

A matter which is postponed to suit the convenience of the House or to secure the attendance of a Member implicated, or to give the Speaker an opportunity to consider it fully does not forfeit priority when eventually raised (u).

**Precedence refused to matters indirectly affecting privilege.**  
—As precedence is naturally desired by Members, care has been taken,

(i) Parl. Deb. (1860) 159, c. 2035.

(k) Parl. Deb. (1880) 252, cc. 667, 788.

(l) Parl. Deb. (1887) 317, c. 1489.

(m) Parl. Deb. (1860) 159, c. 2035; *ibid.* (1880) 252, c. 667, 788.

(n) Parl. Deb. (1864) 174, c. 190.

(o) Parl. Deb. (1860) 159, c. 2035; *ibid.* (1864) 174, c. 190; *ibid.* (1880) 253, c. 433; *ibid.* (1881) 259, c. 1252.

(p) H. C. Deb. (1939-40) 363, c. 611-3.

(q) Parl. Deb. (1901) 92, cc. 376-78.

(r) Parl. Deb. (1902) 108, cc. 204, 206.

(s) H. C. Deb. (1909) 8, c. 1708.

(t) H. C. Deb. (1938) 334, c. 1318-20.

(u) Parl. Deb. (1907) 178, c. 198; H. C. Deb. (1924) 173, c. 1349. See also *ibid.* (1940-1) 374, c. 2046.

after eleven o'clock or supplementary estimates to be considered on a day allotted to Supply.

Motions under these two standing orders are sometimes combined into one motion, but the Speaker has agreed to divide such a motion into its component parts at the request of a member.

Motions not contemplated by the standing orders are for such purposes as the following :

To give precedence to Government business over Private Members' business either on a particular day or days or for a period, for example, until the end of the financial year (C. J. (1928-29) 10).

To give precedence to specified business either on a particular day or at all sittings until concluded. The business is usually a Government bill but precedence has been given to a private Member's motion over other private Members' business (C. J. (1924) 57 ; *ibid.* (1924-25) 180).

To provide that for a period Government business be not interrupted under any standing order relating to the sittings of the House and may be entered upon at any hour although opposed (C. J. (1896) 374). This motion used to be made regularly every summer, but in recent years Governments have adopted the practice of putting down each day for Government business the ordinary motion under S.O. No. 1. The effect is the same except for Fridays.

To provide that specified business be not interrupted at four or half-past four o'clock on a Friday and may be entered upon at any hour although opposed (C. J. (1924-25) 389). This motion is now not often made, and only when it is necessary to ensure that particular business be concluded at that day's sitting, not as formerly in order to help the Government to complete its programme in the last weeks of a session.

To give the Government the whole or nearly the whole time of the House. This object is attained by directing the Speaker to adjourn the House without question put at the conclusion of Government business, or to propose the question for adjournment at the conclusion of Government business or of proceedings made in pursuance of any Act of Parliament requiring any order, rule or regulation to be laid before the House, and to adjourn the House without Question put one hour thereafter or at half-past eleven o'clock whichever be the earlier (C. J. (1924-25) 396). Such a motion is no longer customary and the private Member retains to the end of the session such facilities as the standing orders give him when Government business has precedence at every sitting.

Examples of motions regulating the sittings of the House are :

To provide for the meeting of the House at a different hour from that appointed by the standing orders. This motion is made either when it is necessary or advisable on a particular occasion for the House to meet at a different hour ; or in the case of the last day before an adjournment for the holidays (when that day is not a Friday), as it is customary for the House to meet at eleven o'clock on those days (C. J. (1924-25) 168, 239).

To provide for a Saturday sitting (C. J. (1938-39) 410).

To provide that the end of a sitting be not later than a certain hour (C. J. (1924-25) 389). This is the usual practice on the last day before an adjournment (when that day is not a Friday) (C. J. (1935-36) 170). The motion directs the Speaker to adjourn the House without question put at a stated hour, usually five o'clock, or sometimes at such an hour provided the Royal Assent has been given to certain Acts (C. J. (1924-25) 389).

To provide that the Speaker do not adjourn the House on a Friday, pursuant to S.O. No. 2, until he shall have reported the Royal Assent to an Act or Acts (C. J. (1924-25) 389).

Although, as a rule, previous notice is given of motions relating to the business of the House, previous notice is not essential in the case of motions for the adjournment of the House over Christmas, Easter, or Whitsuntide (*g*); and if notice is given of such motions, the notice may be placed either at the commencement of public business, or among the orders of the day or other notices of motions.

These motions may also be placed at the head of the orders of the day, and, if so placed, have precedence over any bill or other matter to which the House, by order, has given precedence over all the other orders of the day and notices of motions (*h*).

Motions for the allocation of time to a public bill (see p. 455) are set down among the orders of the day.

A motion for a vote of thanks, when moved by a minister of the Crown (*i*), is placed among these motions.

### (3) MOTIONS FOR LEAVE TO BRING IN BILLS, AND FOR NOMINATION OF SELECT COMMITTEES UNDER S.O. NO. 10

Motions for leave to bring in bills and for the nomination of Select Committees, may be set down at the commencement of public business after the foregoing motions, on Mondays, Tuesdays, Wednesdays, and Thursdays by members of the government (*j*) and on Tuesdays and Wednesdays by unofficial Members.

Motions for the discharge of a Member from a Select Committee (C. J. (1918) 141), and for the discharge of Members, and the addition of other Members (C. J. (1903) 118; *ibid* (1912-13) 151, 178; *ibid*. (1914-16) 279; *ibid*. (1919) 283) may also be set down at this place, but not motions for the appointment of Select Committees.

When such motions are opposed, the Speaker, after permitting, if he thinks fit, a brief (*k*) explanatory statement from the Member who moves (*l*), and from a Member who opposes the motion (*m*), puts the question thereon without further debate (*n*), or else the question that the debate be now adjourned (*o*). The Speaker, pursuant to the standing order, reserves to himself the power of proposing the question for an

(*g*) 4 December 1884, 4 April 1871, 19 April 1886, 13 May 1869, 11 May 1880, 15 May 1891, 21 May 1896.

(*h*) C. J. (1882) 492; *ibid*. (1887) 293; Parl. Deb. (1887) 316, c. 60. On Tuesday, 24 May 1898, the motion for the adjournment of the House over Whitsuntide was placed upon the notice paper immediately after a government bill, for which precedence, whenever it might be appointed, had been obtained. Notices of Motions, sess. 1898, p. 1543.

(*i*) Parl. Deb. (1884) 288, c. 434.

(*j*) Parl. Deb. (1898) 53, c. 1383; *ibid*. (1899) 68, c. 42.

(*k*) This has been defined by the Speaker, see H. C. Deb. (1930-31) 252, c. 1785.

(*l*) Parl. Deb. (1890) 346, c. 1615.

(*m*) A Member who rises after the question has been proposed can only speak if he opposes the motion, Parl. Deb. (1894) 23, c. 225; *ibid*. (1905) 150, c. 362; *ibid*. (1907) 171, c. 687, 882; H. C. Deb. (1910) 14, c. 1489, *ibid*. (1938-9) 349, c. 1120; but he need not divide the House, H. C. Deb. (1910) 18, c. 200, 364; *ibid*. (1922) 151, c. 391.

(*n*) C. J. (1905) 358; *ibid*. (1906) 165. An amendment cannot be moved to the question, Parl. Deb. (1902) 113, c. 249; *ibid*. (1908) 190, c. 1736; *ibid*. (1938-9) 349, c. 1120.

(*o*) C. J. (1890-91) 81; *ibid*. (1899) 167; *ibid*. (1905) 339; *ibid*. (1906) 166; *ibid*. (1911) 351; *ibid*. (1929-30) 188. See also the Speaker's remarks in refusing to put the question for the adjournment of the debate on the motion for leave to introduce a government bill, Parl. Deb. (1901) 97, c. 868.

adjournment of the debate (*p*). A motion to adjourn the debate cannot be moved by a Member (*q*).

The adjourned debate of 6 March 1899 on the nomination of a select committee, was ordered to be resumed at the commencement of public business on the following day (*r*), but such adjourned debates are usually resumed among the orders of the day (*s*).

## 10. PRIVILEGE MOTIONS ADMITTING OF NOTICE

In view of the requirement that a matter of privilege should be raised at the earliest opportunity it is generally brought on without notice. But the claim to priority of such a matter is not prejudiced merely on the ground that it has been possible to place a motion dealing with it upon the Notice Paper. Such a motion is either placed at the head of the Paper immediately after any "notices of motions at the commencement of public business" (*t*) (see p. 358), or, if placed lower in the list, may be taken as if it stood first (*u*).

The same treatment is accorded to a matter of privilege if, through the adjournment of the debate on the motion in which it is embodied, it becomes an order of the day (*a*). The priority of a notice of motion or order of the day relating to a matter of privilege is not prejudiced by the fact that the day on which it is to be raised is a day on which, under an order of the House, government business has precedence (*b*), or a day allotted to Supply under S.O. No. 14 (*c*).

## 11. ORDERS OF THE DAY AND NOTICES OF MOTIONS

The ordinary public business of the House consists of orders of the day, *i.e.* a stage of a bill or other matter which the House has ordered to be taken into consideration on a particular day (including orders for the resumption of adjourned debates on bills and motions, see p. 364); and notices of motions.

This distinction is now in substance one between bills, or rather the stages of bills, and other matters brought before the House in the form of motions. But, technically, it is a distinction between business partly considered and new business. For a motion, when the debate upon it is

(*p*) Parl. Deb. (1899) 67, c. 1375; *ibid.* (1905) 148, c. 388; H. C. Deb. (1933-34) 280, c. 2601.

(*q*) H. C. Deb. (1933-34) 278, c. 361

(*r*) C. J. (1899) 75.

(*s*) C. J. (1890-91) 85; *ibid.* (1906) 168; *ibid.* (1911) 353.

(*t*) Notices of Motions, 31 July 1930, 13 June 1934, 11 July 1938, 11 December 1940, etc.

(*u*) See Mr. Speaker's ruling, Parl. Deb. (1889) 338, c. 1089.

(*a*) Case of the printers, C. J. (1837) 450; Parl. Deb. (1837) 38, c. 1249; C. J. (1840) 13, 15, 19, 23, 70; Parl. Deb. (1840) 51, cc. 196, 251, 358, 422; *ibid.* 52, c. 7; case of Azeem Jah, C. J. (1865) 252; Mr. Plimsoll's case, Parl. Deb. (1875) 226, c. 178; Public Petitions Committee (Special Report), C. J. (1878) 130, 238; Parl. Deb. (1878) 238, c. 1741; case of Mr. Wedgwood, C. J. (1911) 36; case of North Galway writ, *ibid.* (1914) 239; case of Kilkenny city writ, Notices of Motions, sess. 1917-18, p. 3278; case of county of Surrey, Reigate division writ, C. J. (1918) 236, 252; Notices of Motions, sess. 1918, pp. 3170, 3225, 3360; Dr. Salter's case, C. J. (1926) 340; Miss Wilkinson's case, C. J. (1928-29) 159; Mr. Sandham's case, C. J. (1929-30) 489.

(*b*) Parl. Deb. (1906) 167, c. 1051.

(*c*) Notices of Motions, 12 July 1906.

adjourned, becomes an order of the day ; and a bill was invariably until 1902, and may still be, introduced upon a motion.

#### READING OF THE ORDERS OF THE DAY

When the orders of the day are reached, the Speaker, pursuant to S.O. No. 11, directs the Clerk at the table to read the orders of the day, without any question being put ; and the orders are thereupon disposed of in accordance with S.O. No. 12, following the order in which they stand upon the notice paper, subject, however, to incidental interruptions of the proceedings of the House (see p. 315), and the postponement of business in certain circumstances at half-past seven o'clock (see p. 315).

Notices of motions standing among the orders of the day are similarly taken in the order in which they stand upon the paper, and S.O. No. 12 is held to apply to them in the same way as to orders of the day.

Accordingly, whilst the Clerk is reading the orders of the day, the proceedings thereon may not be interrupted by any other business or debate which Members may endeavour to interpose (*d*). A motion for the adjournment of the House cannot be made, therefore, whilst the orders of the day are being read, either upon an order of the day being read or in the interval between reading one order and another, unless by a member of the government (see p. 382) with a view to the adjournment of the House forthwith (*e*) or in order that an opportunity may be provided for debating a subject that could not otherwise be raised (*f*).

There is no standing order authority for this concession to members of the Government, but it is now well established. The practice grew up and was accepted, probably, because it was felt that the main purpose of S.O.s Nos. 11 and 12 was to protect the programme of government business from interruption, and that this programme did not need to be protected from members of the Government.

#### PROCEDURE UPON ORDERS OF THE DAY

When an order of the day has been read, it must thereupon be proceeded with, appointed for a future day, or discharged. It cannot be postponed till after another order (except possibly by a motion moved by a Minister at the commencement of public business with the general agreement of the House) (*g*). The Speaker, therefore, calls upon the Member in charge thereof, no other Member being allowed to interpose, unless with his consent (*h*) ; or, in the case of an adjourned debate, upon the Member who moved the adjournment, or was speaking when the debate was interrupted at eleven o'clock, if he rises to address the chair (see p. 420). The Speaker, therefore, will not permit any question to be asked of a Minister or other Member when an order of the day has been read, unless it relates thereto. The right to move an order of the day, to a certain

(*d*) Parl. Deb. (1872) 213, c. 644.

(*e*) C. J. (1905) 346 ; *ibid.* (1923) 87 ; *ibid.* (1935-36) 159.

(*f*) C. J. (1914) 408 ; *ibid.* (1935-36) 140.

(*g*) C. J. (1894) 394 ; Parl. Deb. (1894) 29, c. 178.

(*h*) Parl. Deb. (1860) 157, c. 1301 ; *ibid.* (1860) 160, c. 349. Sir J. Fergusson, on the Representation of the People Bill, (1860) 159, c. 26.



extent, belongs to the House at large, and is not vested solely in the Member who has charge of the order (*i*). In his absence, the motion thereon may be made by another Member (*k*), or, in like manner, a motion may be made that the order be deferred to a future day, though not to a remote date, in order to defeat the bill (*l*).

On 21 August, 1893, Mr. Speaker said that he would decline to put the question for postponing the consideration of the Lords' amendments to the Wild Birds' Protection Bill for three months except upon the motion of the Member in charge of the bill. In the absence of the Member in charge, a motion has sometimes been made, without notice, to discharge the order for the second reading of a bill. This practice has been strongly discountenanced from the chair (Parl. Deb. (1873) 216, c. 276; *ibid.* (1893) 18, c. 419). An amendment to the same effect, to a formal question for the postponement of a bill, has been discouraged no less distinctly (Parl. Deb. (1875) 224, c. 1236; *ibid.* (1878) 240, c. 1675).

Nor, on these occasions, can a motion be made in contradiction to any intimation regarding an order of the day, which the Member in charge thereof has made at the table. The revival of an order of the day (see p. 365), when it has been removed from the notice paper by an adjournment or other action on the part of the House, is, according to the habitual practice of the House, reserved for the Member in charge of the order.

#### DEFERMENT OF ORDERS AND MOTIONS

When, during the time of unopposed business, the orders of the day which were not reached before eleven o'clock are read at the table, a Member in charge of an order has the opportunity, by saying "Now" when the title of his bill is called, to secure its passing the stage at which it stands, if no objection is raised by another Member, and also, similarly, if no objection is raised, of its passage through further stages. A single objection, however, stops proceedings (see p. 307), and it then only remains for a Member in charge of an order to name a day to which he desires it to be deferred (S.O. No. 1 (7)). This action is in theory a motion but no question is put on it, the Speaker merely announcing the day proposed by the Member. In the absence of the Member in charge and of any other Member acting on his behalf, the clerk at the table suggests to the Speaker the date to be announced, acting either on instructions from the Member in charge or according to his probable intentions. Or the clerk may (as is usual towards the end of the session) tell the Speaker that he has had no instructions, in which case no day is announced and the order "drops" (see p. 365). The announcement of a day by the Speaker secures its entry in "Votes and Proceedings" and in the "Order Book" (see p. 250).

The procedure with regard to notices of motions is similar except that the Speaker calls the name of the mover without the title being read. If it is deferred a date is announced in the same manner as for an order, except that it is entered in the "Order Book" only and not in "Votes and Proceedings."

(i) Parl. Deb. (1886) 305, c. 353.

(k) Parl. Deb. (1908) 191, c. 1107.

(l) Mr. Speaker's ruling (private), 13 May 1886. See also H. C. Deb. (1936-7) 324, c. 276-7.

**Orders of the day not to be brought forward to an earlier date.**

—When the House has appointed a day for the consideration of a bill or other matter, no earlier day can afterwards be substituted.

This rule was enforced, even when a day had been named by mistake, and though no objection was raised to the appointment of an earlier day (*m*). If, however, an error has arisen in the postponement of an order of the day, whilst the orders are being read, the transfer of the order of the day to an earlier day than that originally named has been allowed, on an appeal to the Speaker (*n*).

**Orders of the day not reached before the adjournment of the House.**—Orders of the day which, owing to the suspension of a sitting, or to an adjournment of the House, have not been read at the table, are set down upon the notice paper after the orders of the day appointed for the next sitting of the House; subject to the right of Government to arrange the order of their business, whenever such business has priority (*o*).

## PROCEDURE ON NOTICES OF MOTIONS

A motion, notice of which stands upon the order paper of public business, is brought before the House by the Speaker calling the name of the mover according to the order in which it stands upon the paper; and if a Member does not rise when his name is called, he cannot subsequently ask that his name should be called again, for the purpose of moving the motion of which he had given notice. A member of the Government may act in behalf of a colleague in all cases, including the proposal of new clauses on the report stage of a bill (*p*); but, with this exception, or in the case of an unopposed return or of a motion for leave of absence, no motion can be moved save by the Member in whose name the notice stands. The power of moving a motion, in terms that differ from the notice standing upon the paper, is defined on p. 374.

## REVIVAL OF DROPPED ORDERS

When an order of the day has been read, the proceedings thereon may be cut short by the adjournment of the House whilst those proceedings are in course of transaction (see p. 309). An order of the day, in such cases, or if, when the order is read, no day is appointed for its future consideration, drops off the notice paper, as the House has made no order thereon. In committee the same result may be produced, either through the absence of a quorum (*q*) or by a resolution directing the chairman to leave the chair (see pp. 311, 574). To replace a dropped order of the day upon the notice paper, a motion is made before the commencement, or after the

(*m*) London, Chatham and Dover Railway Bill, 6 July 1863. In this case the standing orders were suspended in order to accelerate the next stage of the bill, C. J. (1863) 237; Parl. Deb. (1863) 172, c. 246. See also *ibid.* (1886) 305, c. 379.

(*n*) Vehicles' Lights (No. 2) Bill, 31 July 1893, Parl. Deb. (1893) 15, c. 871; certain government orders of the day, 16 April 1907, Parl. Deb. (1907) 172, c. 1012.

(*o*) Parl. Deb. (1888) 323, c. 1538.

(*p*) Parl. Deb. (1864) 76, c. 2034; *ibid.* (1881) 258, c. 1664.

(*q*) C. J. (1854-55) 449.

close, of public business, to appoint the order for a subsequent day (*r*). These motions, which are made without notice, are usually treated as purely formal motions (see p. 372) (*s*).

If on such order of the day procedure has been commenced and interrupted, the proceeding thus revived is set down for resumption at the position indicated by the last decision of the House entered upon the votes and proceedings (*t*). If the interruption occurred after the adjournment of the debate had been moved, the motion for the revival of the order of the day relates to the order itself, the motion for the adjournment of the debate being treated as a lapsed motion (*a*). When it is essential that proceedings on an order of the day, cut short by an unexpected adjournment, should be resumed at the next sitting of the House, a notice of motion is placed for that purpose, in the name of a Minister of the Crown, upon the notice paper for the next sitting, at the commencement of public business; and the dropped order is placed, printed in italics, at the head of the list of the orders of the day (*b*), or at the place among the orders of the day at which it is proposed to be taken (*c*). If the House is counted out after proceedings upon an order of the day have been postponed and before their resumption, the order of the day is not treated as a dropped order but is set down on the following day as if it were an order which has not been reached (*d*), (see p. 365).

#### REVIVAL OF SUPERSEDED ORDERS

An order of the day may be superseded by the vote of the House, as, for instance, when an amendment embodying an abstract proposition is substituted for the question that the bill be now read a second time, or for the question that Mr. Speaker do now leave the chair for the Committee of Supply. For the method of reviving such orders, see pp. 692-4.

#### RENEWAL OF NOTICES OF MOTIONS

A notice of motion standing upon the notice paper for the day's sitting, which is not brought on before the adjournment of the House, disappears from the paper, unless the Member in whose name the notice stands, or a

(*r*) Joint Stock Companies Bill, Parl. Deb. (1884) 176, c. 99, 101; see also C. J. (1864-65) 348, 351; *ibid.* (1865) 225, 230, 352, 355; *ibid.* (1867) 377, 404; Supply, *ibid.* (1870) 28c, 284; *ibid.* (1890) 305, 307; *ibid.* (1918) 149, 150. When supply had become a dropped order owing to the adjournment of the House immediately after the question for the Speaker's leaving the chair had been negatived, notice was given of the motion to be moved on the following day "That this House will to-morrow resolve itself into the Committee of Supply," Notices of Motions, sess. 1923, p. 1258; H. C. Deb. (1923) 162, c. 1243.

(*s*) If debate occurs on such a motion, it must be strictly limited to the precise object of the motion, Parl. Deb. (1884) 290, c. 934; H. C. Deb. (1917) 99, c. 237; *ibid.* (1923) 162, c. 1221, 1251.

(*t*) 10 August 1877, Sale of Food, etc., Bill, C. J. (1877) 434, 435; 8 August 1878, Sale of Intoxicating Liquor (Ireland) Bill, *ibid.* (1878) 419, 424; 5 May 1884, Redistribution of Seats Bill, *ibid.* (1884) 208, 209.

(*a*) C. J. (1878-79) 122, 124; *ibid.* (1911) 351, 388.

(*b*) C. J. (1876) 282, 283; Parl. Deb. (1876) 230, c. 431; C. J. (1877) 294, 296; Parl. Deb. (1877) 235, c. 203; C. J. (1878) 212, 213; *ibid.* (1884-85) 239, 240; *ibid.* (1889) 112, 115; *ibid.* (1890) 81, 83; Parl. Deb. (1890) 342, c. 347; C. J. (1895) 162, 164; Notices of Motions (1912-13) 5026; debate on a motion, C. J. (1917-18) 238, Notices of Motions, (1917-18) 4336.

(*c*) C. J. (1877) 326, 328; *ibid.* (1919) 92, 93.

(*d*) Trade Disputes and Trade Unions Bill, 1927, C. J. (1927) 144, 145; Notices of Motion: 5 May 1927, p. 1336.

Member in his behalf, gives a direction at the table for the replacement of the notice upon the notice paper for a future day.

## 12. EXEMPTED BUSINESS.—PROCEEDINGS ON STATUTORY ORDERS AND REGULATIONS

The various kinds of business exempted from the operation of the eleven o'clock rule under S.O. No. 1 (6) have been mentioned above (p. 305). All the items composing such business may be taken before eleven o'clock; and most of them generally are so taken and do not accordingly require special notice in this Chapter. But there is one class of business which is almost invariably taken after eleven o'clock, namely, proceedings upon those administrative orders, rules, and regulations which constitute what is sometimes called delegated or subordinate legislation (e).

These proceedings arise through the exercise by Parliament of the degree of control reserved to it (by the statutes which empower various authorities to make orders, regulations, and rules) over such delegated legislation. Such proceedings may be summarized as follows. An instrument of this kind is presented to Parliament and required to lie upon the Tables of both Houses for a period prescribed by the Act under which it is laid (f), the duration of this period varying in different cases.

### METHOD OF CONTROL BY PARLIAMENT

It is impossible to give an exhaustive list here of the variations in the method of control prescribed by statute, but a few general remarks may serve to illustrate the operation of the system. All these rules and orders are required to be laid before both Houses of Parliament as soon as they are made or, if Parliament be not sitting at the time, as soon as possible after its next meeting, and to lie upon the table for a prescribed period (see pp. 806-7) (g). In order to ascertain the period during which they are required to lie upon the table and the mode in which Parliament exercises its control over them, resort must be had in each case to the statute under which they are made as no general rule exists.

The control left to Parliament is, broadly speaking, of two kinds;

(e) Unless such proceedings are for the purpose of approving or disapproving and are explicitly required or permitted in each case by the authorizing statute, they are not exempted from the operation of the eleven o'clock rule, *Parl. Deb.* (1899) 71, c. 222; *ibid.* (1901) 96, c. 1009; *ibid.* (1904) 135, c. 807; *H. C. Deb.* (1935-6) 313, c. 1908, 1910. See p. 806 for examples.

(f) In certain cases, *e.g.* under the Territorial and Reserve Forces Act, 1907, s. 4 (3), there is only an obligation to lay the orders, etc., and in others, *e.g.* under the Elementary Education Act, 1870, s. 97, there is in addition a prohibition against the authority taking any action in virtue of the instrument for a prescribed period of time. In such cases no proceedings under the authorizing statutes can be taken in Parliament, and they need not be considered here.

(g) As to the preliminary publication of such rules in certain cases, see Rules Publication Act, 1891, s. 1, and as to the obligation to submit certain draft orders to the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons, the power given to the chairmen to report that the orders ought not to be proceeded with without the authority of Parliament, and the power of either House to direct that the proposals should be dealt with by a private bill, see Ministry of Transport Act, 1919, s. 29 (3).

either that the order, etc., ceases to have effect or does not come into effect unless within the prescribed period the approval of both Houses is signified—known as affirmative resolution—or that it ceases to have effect if within the prescribed time a motion disapproving of it is agreed to in either House.

(1) **By affirmative resolutions.**—In certain cases where the Crown is empowered to act by order in council, the statute requires that the draft order in council shall be laid before both Houses of Parliament and that the order in council shall not be made unless both Houses present addresses to the Crown praying for the order to be made (*h*), or have agreed to resolutions approving the draft order (*i*). In other cases an order made by a Minister becomes operative only after a resolution has been passed by both Houses approving the draft order (*k*). Power is sometimes given to both Houses to approve a draft order in council (*l*) or departmental order (*m*) with modifications (*n*), and in such cases the orders may only be made with such modifications as have been agreed to by both Houses.

Regulations made under the Emergency Powers Act, 1920, must be presented to Parliament as soon as may be after they are made, but do not continue in force after the expiration of seven days from the time when they are so laid, unless a resolution is passed by both houses providing for their continuance (*o*).

As the two Houses act concurrently, and not conjointly, in debating and passing resolutions, some difficulty arises in securing that when one House has approved of a draft order in council with modifications, the other House shall approve of it with the same modifications so as to comply with the procedure laid down, for instance, by the Government of India Act, 1935, for making a draft order in council effective. A resolution of one House is not submitted, like a bill, to the other House, for its agreement. This difficulty has been surmounted by delaying the final approval of one House, by means of an adjournment of its debate, until the approval with or without modification of the other House had been signified (*p*).

Orders made by the Treasury or the Board of Trade under the Import Duties Act, 1932, are required, under s. 19, to be laid before the House of Commons only (*q*); and any order imposing a duty of customs ceases to have effect on the expiration of a period of twenty-eight days (excluding any period

(*h*) Military Manœuvres Orders in Council, Military Manœuvres Act, 1897, s. 1 (3), L. J. (1903) 112; C. J. (1903) 181.

(*i*) Ministry of Health Act, 1919, s. 8 (3); Ministry of Transport Act, 1919, ss. 9 (1), 13. See also pp. 806-8.

(*k*) Ministry of Transport Act, 1919, s. 29 (3).

(*l*) Ministry of Health Act, 1919, s. 8 (3).

(*m*) Government of India Act, 1919, s. 44.

(*n*) C. J. (1920) 314. An amendment to the question approving an order suggesting a modification in the order must be drafted in such a way as to specify the amendment which it is sought to make, H. C. Deb. (1920) 132, c. 829.

(*o*) Emergency Powers Act, 1920, s. 2 (2). The regulations may be added to, revoked, or altered by resolution of both Houses of Parliament, *ibid.* s. 2 (4); L. J. (1921) 97, 99, 146, 184; C. J. (1921) 81, 131, 176.

(*p*) L. J. (1935-36) 329; C. J. (1935-36) 324, 344.

(*q*) The restriction of the presentation of such orders to the House of Commons is also a provision of other acts which authorize the imposing of duties by administrative order in the first instance, such as the Abnormal Importations (Customs Duties) Act, 1931, s. 1 (2); the Horticultural Products (Emergency Customs Duties) Act, 1931, s. 1 (2); and the Ottawa Agreements Act, 1932, s. 10.

of dissolution, prorogation, or adjournment of more than four days) from the date on which it was made, unless before the expiration of that period it has been approved by a resolution of that House, but without prejudice to anything previously done thereunder or to the making of a new order.

(2) **By resolutions, etc., expressing disapproval.**—In certain cases, such as special orders and regulations relating to factories and workshops, and orders in council relating to, and the rules of, the Supreme Court of Judicature, the orders, etc., come into force from the date of their issue or a date fixed by the orders, but may be annulled wholly or in part, if an address or resolution of either House to that effect is carried within a period fixed by the statute under which they are made (*r*). In other cases (such as statutes of the governing bodies of some universities and colleges, and schedules of documents in public offices which it is proposed to destroy), action on the part of the Crown in issuing an order in council, or on the part of an authority in making the order, is delayed for a certain period, during which a resolution of either House will abrogate the orders, etc., wholly or in part (*s*).

The method by which either House of Parliament signifies its disapproval, or proposes an alteration, of these orders and regulations should, unless otherwise directed by statute, be the presentation of an address to His Majesty (see pp. 789, 808).

#### PERIOD DURING WHICH PARLIAMENTARY CONTROL IS EXERCISABLE

The number of days during which an order is to lie upon the table varies within wide limits in different statutes. Such days are calculated, in the absence of any statutory direction to the contrary (*t*) not according to the days on which the House actually sits, but of days during the session of Parliament (*u*). Unless it be otherwise expressly enacted by statute (*a*), this period must be comprised in the same session (*b*), a prorogation or dissolution being conclusive of such proceedings or business pending at the time (see p. 263). It has been decided that when the statutory period is not completed before a prorogation, an order must be re-presented in the following session and lie upon the table for the full statutory period from the date of such re-presentation.

#### SUPPLEMENTARY PROVISIONS TO MAKE CONTROL EFFECTIVE

Both Houses have taken steps to make their control over these rules and orders effective. The House of Lords has ordered that schemes

(*r*) Supreme Court of Judicature Act, 1875, s. 25; Factory and Workshops Act, 1901, ss. 84, 126 (3); Ministry of Transport Act, 1919, s. 29 (1); C. J. (1902) 348.

(*s*) Universities of Oxford and Cambridge Act, 1877, s. 50; Public Record Office Act, 1877, s. 1.

(*t*) See Supreme Court (Northern Ireland) Act, 1942, s. 2; Education Act, 1944, s. 112, etc.

(*u*) Letter from the Clerk of the House to the Secretary of the Home Office, 23 March 1866 (No. 36720-45). In some cases the prescribed period is a certain number of days "during which the House is sitting," e.g. Prison Act, 1898, s. 2 (2).

(*a*) Import Duties Act, 1932, s. 19 (3).

(*b*) Parl. Deb. (1887) 311, c. 852; H. C. Deb. (1919) 112, c. 736.

under an Act, required to be laid for a prescribed number of days before being sanctioned by order in council, are to be laid in full (c), and has provided that orders requiring an affirmative resolution of the House shall receive a preliminary examination from a committee regularly appointed for this purpose every session (see p. 809). In the House of Commons any proceedings under a statute taken within the prescribed period are exempted from interruption under S.O. No. 1 (see p. 305). If such a paper be laid in dummy the time during which proceedings under a statute might be taken has been held by the Speaker to run from the day upon which a full, though not necessarily a printed, copy of the order was available for Members (d).

*Sessional Committee on Statutory Rules and Orders in the Commons.*—On 17 May, 1944, in the course of debate on a private Member's Motion, in favour of setting up a select committee to examine statutory rules and orders presented to Parliament, the Government promised to appoint such a committee each session (e).

On 21 June, 1944, a committee was accordingly appointed to consider every statutory rule or order upon which proceedings may be taken in either House under any Act, with a view to determining whether the attention of the House should be drawn to such rule or order on any ground connected with charges on the public revenues, or with the unexpected use of the powers conferred by the parent Act, or with the exclusion of the order from the possibility of challenge in the courts or with the elucidation of its form or purport (f). See also p. 809.

For an example of a report from the select committee, see the Journal of 18 July 1944 (C. J. (1943-44) 153), when the committee were of opinion that the attention of the House should be drawn to an order because it appeared to make some unusual or unexpected use of the powers conferred by the parent Act and because its form called for elucidation.

### 13. ADJOURNMENT MOTIONS AT END OF BUSINESS

Until the hour at which the House is adjourned without question put under Standing Order No. 1 (2) is reached the House can only be adjourned on motion, and this motion is debatable, thus affording Members an opportunity of raising various matters (g). For special provision for private Members to raise points on adjournment during the war, see Emergency Procedure, p. 814.

(c) L. J. (1900) 107.

(d) Parl. Deb. (1899) 69, c. 625, 647; *ibid.* (1901) 96, c. 1007; H. C. Deb. (1909) 6, c. 712, 1372; *ibid.* (1910) 17, c. 1315.

(e) H. C. Deb. (1943-44) 400, c. 202 *et seq.*

(f) C. J. (1943-44) 135.

(g) For matters that cannot be raised on this motion see p. 425.

## CHAPTER XVII

### THE PROCESS OF DEBATE, BY MOTION, QUESTION AND DECISION

#### QUESTION THE CENTRAL POINT OF DEBATE

Every matter is determined in both Houses upon questions put from the Chair upon a motion made by a Member, and resolved in the affirmative or negative, as the case may be. The proceedings between the rising of a Member to move a motion and the ascertainment by the Chair of the decision of the House constitute a debate, and this process affords an opportunity for, and usually involves, discussion, although a decision may be reached without discussion. The essential stages in obtaining a decision of the House are (1) the moving and (usually) seconding of a motion; (2) the proposing of a question by the Chair; and (3) the putting of the question and collection of the voices by the Chair. These three stages are connected together by the question, which must, according to long-established practice, repeat the terms of the motion (*a*), and which must be so framed as to be capable of expressing a decision of the House. Moreover, no speech is permissible except to a question or to move or second a motion which becomes a question, and every speech is confined by the rule of relevancy (see pp. 423-4) to the terms of the question. The interval between the proposing and the putting of the question, which is normally used for discussion, gives an opportunity for further proceedings, such as the moving of an amendment; and this may give rise to a subsidiary debate, with its own question and decision, within the principal debate. At the end of the process, when the question or main question is put, a decision is registered either by the Chair announcing that in his opinion the "ayes" (or the "noes") have it, or (if that is challenged) by a division of the House into separate lobbies for the purpose of ascertaining which side is in the majority.

In this chapter, which is intended to give a complete account of the process of debate, the procedure of Parliament will be described under the following heads :—

- A. Motions.
- B. Questions.
- C. Amendments.
- D. Divisions.

Where they differ materially, the procedure of each House will be stated separately.

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(a) Recognized exceptions to this rule are given on pp. 380, 697.



## A. MOTIONS

The term "motion," which in its wide sense means any proposal made for the purpose of eliciting a decision of the House, covers several distinct forms of proceeding. Motions may be divided into : 1. Independent or Substantive Motions ; and 2. Dependent or Subsidiary Motions. The former term explains itself. The latter kind of motions covers (1) ancillary motions dependent on an order of the day, such as the motion that a bill be now read a second time, or that the House agrees with the report of a committee ; (2) motions moved for the purpose of superseding questions, such as motions for the adjournment of a debate or for the previous question (see p. 383) ; (3) a motion dependent on another motion, such as an amendment. Stated generally, substantive motions require notice, whereas dependent or subsidiary motions do not. The rules regulating the requirement of notice, however, depend more upon practical than upon logical considerations, and are set out below. When notice is required, the terms in which a motion is moved should be the same as the terms of the notice, or should at any rate be covered by them and without the importation of any fresh matter (b).

## RULES REGULATING REQUIREMENT OF NOTICE

**Period of notice.**—No positive rule has been laid down as to the minimum time which should elapse between the notice and the motion (c) : but some interval is generally assigned to motions that may provoke debate. Notices of motions for leave to bring in bills, or for other matters to which probably no opposition will arise, are frequently given during the day before the sitting on which the motions are submitted to the House.

**Change of day for a motion.**—Should a Member desire to change the day for which he first gave notice, he must defer the notice to a more distant day, it being irregular to fix an earlier day than that originally chosen (d) ; nor can this rule be evaded by changing the motion into an amendment to another question (e).

**Formal motions made without notice.**—Certain formal motions which are necessary for the due transaction of business are made without notice, before the commencement or after the close of public business, such as motions for the first reading of bills received from the House of Lords (see p. 486) ; for the appointment of a committee of the whole House upon a subsequent day (see p. 569) ; for the consideration of Lords' amendments forthwith, or upon a future day (see p. 545) ; for the postponement, the discharge, or the revival of an order of the day (see pp. 364-5) ; for returns or papers to be presented forthwith (see p. 254) ; for the reference of papers to a select committee (see p. 580) ; and for giving power to a select committee to hear counsel (see p. 599). See also p. 373.

(b) Parl. Deb. (1907) 171, c. 680.

(c) Parl. Deb. (1871) 207, c. 143.

(d) Mirror of Parl. 1835, p. 275 ; Parl. Deb. (1852) 122, c. 959 ; *ibid.* (1859), c. 154, 537. See, however, the Speaker's remarks in allowing a motion to be made which had been taken off the Paper and put down again for an earlier day, H. C. Deb. (1928) 214, c. 362.

(e) Parl. Deb. (1834) 21, c. 225 ; *ibid.* (1835) 30, c. 8.

These motions are, with the exception of the consideration forthwith of Lords' amendments and the appointment of a committee of the whole House, now regularly entered as agreed to by the House in the clerks' books as a matter of course (*f*). On the presentation of a petition for the production of evidence in the possession of the House (see p. 638), unless objection be taken, a motion is made to carry out the object of the petitioners (*g*).

**Privilege.**—Motions arising out of a matter of privilege (see p. 356), or to appoint a committee on a matter of privilege (see p. 134 n. (*j*)), are also moved without notice.

**Motions of which notice is requisite.**—Previous notice of certain motions is in certain cases prescribed by the standing orders, and in others required by usage.

(1) *Under standing orders.*—Under S. O. No. 14 notice must be given of a motion for an addition to the days allotted to the business of supply (see p. 687); under S. O. No. 32, of the presentation of a bill without an order of the House (see p. 483); under S. O. No. 37, of new clauses on the report of a bill (see p. 536); under S. Os. Nos. 53 and 55, of a motion or an amendment regarding the nomination of members for service on select committees, or for constituting a select committee of more than fifteen members, or for a proposed addition to a committee (see p. 528); and, under S. O. No. 78, for the circulation of a petition with the notice paper of the House (see p. 804).

(2) *Under usage.*—Pursuant to established usage, notice is requisite in the following cases, namely, a motion granting leave of absence to a Member (see p. 223); to discharge a member from attendance on a select committee (*h*) when not moved pursuant to the report of a committee (see p. 580); an amendment to the question for going into the Committee of Supply (see p. 351); an instruction to a committee and an amendment which enlarges the scope of an instruction (see p. 516); and motions to rescind a resolution of the House, or to expunge or alter the form of an entry in "The Votes and Proceedings" (*i*), except under certain conditions, as in the case of a privilege motion (see p. 390). Notice has invariably been given of motions for exempting business from the operation of S. O. No. 1 (*j*) (see p. 359), or any other standing order, or for the suspension of a standing order in a particular case.

**Waiver of notice.**—The House can waive the right of requiring notice for a substantive motion, if the motion is moved under the sanction of the Chair and with the general concurrence of the House. Thus a motion for an address of condolence on the occasion of the death of Queen Alexandra was moved without notice (*k*).

(*f*) Parl. Deb. (1900) 82, c. 1067; H. C. Deb. (1914) 61, c. 1885.

(*g*) Parl. Deb. (1882) 270, c. 805.

(*h*) For procedure on motions affecting the service of members on select committees who have been nominated by the committee of selection, see p. 580.

(*i*) Parl. Deb. (1882) 271, c. 1268; *ibid.* (1884-85) 294, c. 1423; H. C. Deb. (1909) 7, c. 2303.

(*j*) Mr. Speaker's private ruling in the case of the Gold Standard (Amendment) Bill, 21 September 1931. For modification of this rule during the war of 1939-45, see p. 814.

(*k*) C. J. (1924-25) 409. See also Address in case of Emergency Regulations, 30 August 1926, H. C. Deb. (1926) 199, c. 6.

The following illustrations, taken from motions relating to public business, may also be given :—

On 6 May 1836, the House, by general concurrence, resolved itself into the Committee of Ways and Means to receive the financial statement of the session, although the order for that committee had not been appointed for that day (*l*). Without previous notice motions have been made to provide for a Saturday sitting (*m*), to alter the time for the next sitting of the House (*n*), or to regulate the adjournment of the House (*o*), or to give precedence to notices of motions over orders of the day or *vice versa*, such motions being made either at the close of the sitting prior to the day when the order would operate or at the opening thereof (*p*). So also, without previous notice, the standing order regulating a twelve o'clock sitting was read and suspended upon the previous day; and, as is mentioned elsewhere (see p. 694), estimates have been considered in the Committee of Supply without the customary notice (*q*). A motion to give immediate effect to a resolution of the House has also been moved without notice; for instance, when the House had rescinded and discharged the order for the appointment of a select committee, an order was made immediately for the reappointment of the committee with altered terms of reference (*r*). A motion to rescind the committal of a bill to a standing committee has been made in like manner (*s*). A message from the House of Lords declaring the expediency of the appointment of a joint committee has been considered without notice and a resolution for concurring with the Lords agreed to (*t*). Motions for a new writ (see p. ) or for the appointment of the Committees of Supply and of Ways and Means or of a committee, upon a future day, to consider a charge upon the public exchequer (see p. 731), are normally made without notice.

The objection of any Member is enough to prevent the waiver of notice, as, for instance, in the case of a motion for an eleven o'clock sitting on a day other than Friday (*u*).

*Change of terms of notice of motion.*—A modification of a notice of motion standing upon the notice paper is permitted, if the amended notice does not exceed the scope of the original notice (*a*). If a motion is proposed, which differs materially from the terms of the notice, it can only be made with the consent of the House, or upon a renewal of the notice (*b*).

#### RULES GOVERNING SUBJECT-MATTER OF MOTIONS

##### Matters to be dealt with by a substantive motion.—Certain

(*l*) C. J. (1836) 330.

(*m*) C. J. (1914) 435.

(*n*) C. J. (1878) 355, 396; *ibid.* (1890-91) 410; *ibid.* (1892) 137; *ibid.* (1909) 106; H. C. Deb. (1909) 3, c. 1119; C. J. (1917-18) 202; H. C. Deb. (1917) 97, c. 1186, 1301, 1344; *ibid.* (1926) 199, c. 6.

(*o*) C. J. (1920) 379; H. C. Deb. (1920) 133, c. 543; C. J. (1924) 386; H. C. Deb. (1924) 177, c. 319, 473; see also C. J. (1893-94) 57; Parl. Deb. (1893) 8, c. 1153; C. J. (1896) 243; Parl. Deb. (1896) 41, c. 210; C. J. (1923) 92; H. C. Deb. (1923) 162, c. 1639.

(*p*) C. J. (1852) 320; *ibid.* (1880) 33; Parl. Deb. (1880) 250, c. 386; C. J. (1892) 229.

(*q*) See also Mr. Ducane's motion, Parl. Deb. (1860) 156, c. 1473.

(*r*) C. J. (1870) 169; Parl. Deb. (1870) 201, c. 79.

(*s*) Employers' Liability Bill, 4 May 1893, C. J. (1893-94) 249; Beer Bill, 26 July 1901, C. J. (1901) 347.

(*t*) C. J. (1895) 127, 131; *ibid.* (1911) 27, 28; H. C. Deb. (1911) 21, c. 1245.

(*u*) 27 September 1926, H. C. Deb. (1926) 199, c. 254.

(*a*) Parl. Deb. (1907) 171, c. 680.

(*b*) Parl. Deb. (1857-58) 148, c. 719; *ibid.* (1861) 161, c. 854; *ibid.* (1872) 212, c. 219 *ibid.* (1895) 33, c. 961.

matters cannot be debated, save upon a substantive motion which admits of a distinct vote of the House. Among these may be mentioned the conduct of the sovereign, the heir to the throne, the Viceroy and Governor-General of India, the Governor-General of Burma, the Governors-General of the Dominions (*c*), the Lord Chancellor (*d*), the Speaker (*e*), the Chairman of Ways and Means (*f*), members of either house of Parliament and judges of the superior courts of the United Kingdom, including persons holding the position of a judge, such as a judge in a court of bankruptcy and of a county court (*g*). These matters cannot, therefore, be questioned by way of amendment, or upon any motion for adjournment (*h*). For the same reason, no charge of a personal character can be raised, save upon a direct and substantive motion to that effect (*i*). No statement of that kind can, therefore, be embodied in a notice proposing to call the attention of the House to a stated matter (*j*).

**Matters pending judicial decision.**—A matter, whilst under adjudication by a court of law, should not be brought before the House by a motion or otherwise (*k*).

**Matters already decided during the same session.**—A motion or an amendment may not be brought forward which is the same, in substance, as a question which has been decided in the affirmative or negative during the current session. The rule may be fully stated as follows:—No question or bill shall be offered in either House that is substantially the same as one on which its judgment has already been expressed in the current session (*l*).

The rule will be explained here only in its bearing upon motions. The determination as to whether and how far a bill raises the same question as that decided on a previous bill is a matter of much greater complexity, involved in special difficulties arising out of the relations between the two Houses; and its consideration is accordingly deferred to the chapter on bills (see p. 491). The rule also applies to amendments (see p. 396).

(*c*) H. C. Deb. (1913) 55, c. 243; *ibid.* 56, c. 809.

(*d*) H. C. Deb. (1924) 175, c. 940; *ibid.* 177, c. 477.

(*e*) Parl. Deb. (1887) 313, c. 371; H. C. Deb. (1924-25) 184, c. 1391.

(*f*) Parl. Deb. (1893-94) 10, c. 1411; *ibid.* (1901) 95, c. 235; H. C. Deb. (1912-13) 48, c. 749. Temporary chairman, Parl. Deb. (1901) 98, c. 245. Chairman of a standing committee, H. C. Deb. (1924) 173, c. 1349.

(*g*) Parl. Deb. (1887) 312, c. 736, 1110; *ibid.* 320, c. 1024; *ibid.* (1893-94) 14, c. 1090. See also H. C. Deb. (1926) 200, c. 855.

(*h*) Parl. Deb. (1882) 268, c. 1140; *ibid.* 271, c. 1290; C. J. (1884-85) 78; Parl. Deb. (1884-85) 294, c. 1912; *ibid.* (1889) 337, c. 1020; H. C. Deb. (1913) 55, c. 39, 242; *ibid.* (1920) 131, c. 1205; *ibid.* (1924) 175, c. 940.

(*i*) Parl. Deb. (1848) 96, c. 1206.

(*j*) Parl. Deb. (1883) 277, c. 1500.

(*k*) Parl. Deb. (1844) 72, c. 85, 98; *ibid.* (1889) 335, c. 992, 1254, 1267; *ibid.* 337, c. 899.

(*l*) C. J. (1547-1628) 162, 306, 434. Cases when the Speaker has intervened to enforce this rule, C. J. (1840) 495; Parl. Deb. (1844) 76, c. 1021; *ibid.* (1860) 158, c. 1348; *ibid.* (1870) 201, c. 824; *ibid.* (1873) 214, c. 287; C. J. (1900) 139; *ibid.* (1902) 236; Parl. Deb. (1906) 160, c. 364; C. J. (1908) 225; H. C. Deb. (1912) 38, c. 1754; C. J. (1920) 167; H. C. Deb. (1920) 129, c. 931. For application of rule to a notice of motion which raised a question discussed on an amendment to the address in the same session, see H. C. Deb. (1912) 35, c. 1043.

Whether the rule would apply as between a motion and a bill is a difficult matter to decide. But it is unlikely that substantially the same question could be raised by a motion and a bill as a whole. A motion can do no more than affirm the desirability of legislation in general terms, whereas a bill is apt to contain qualifying provisions and conditions, generally sufficient to differentiate its subject-matter from that of a motion. In any case a bill and a motion have different purposes. The question has, however, been raised, but so far without a case for the application of the rule having been made out.

On 8 December 1857, a resolution was proposed for extending limited liability to joint-stock banks, to which an amendment was proposed affirming the same principle in a modified form. The House refused to permit either of these propositions to form part of the question, which was consequently reduced to the single word "that." On 11 February following, a bill to the same effect was brought in without objection, the House having pronounced its judgment upon a question not substantially the same (*m*).

On 5 March 1872, a motion was made impugning the general operation of the Elementary Education Act, 1870, and enumerating several points in which it failed, including the payment of school fees to denominational schools, and an amendment to the question thereon was carried affirming that it was too soon to review the provisions of the Act. On 23 April, a Member brought forward a motion for leave to bring in a bill to repeal section 25 of the Education Act, which authorized the payment of school fees to denominational schools. Exception was taken to this motion, on the ground that substantially it had been embraced in the resolution of 5 March, and was excluded from consideration by the amendment; but it was held that a resolution in terms so general could not prevent a Member from moving for leave to bring in a bill to repeal a single section of the Act. Moreover, a motion for leave to bring in this bill differed essentially from a motion condemning in general terms the operation of the Act (*n*).

A question may be raised again if it has not been definitely decided. Thus a motion which has been withdrawn or not been seconded, or the decision on which has been intercepted by an adjournment as the result of a count of the House or for some other reason, may be repeated (*o*).

Where a question has been *superseded* either by the omission of all the words after "that" and the substitution of other words, or (if proposed as an amendment) by a decision that the words proposed to be left out stand part of the question, technically, indeed, no final decision has been reached (see pp. 384-5), and the original question, in the first case, and the question raised by the amendment, in the second case, could in theory be repeated. But on the analogy of the application of the rule to bills (see p. 500) the repetition of questions thus superseded has been disallowed on the ground that a decision to consider an amendment in preference to the original question or the original question in preference to an amendment is (when they contained conflicting propositions, see p. 385)

(*m*) C. J. (1857-58) 10, 48. See also proceedings on Negro Apprenticeship, 1838, C. J. (1837-38) 418, 541.

(*n*) C. J. (1872) 78, 156.

(*o*) Parl. Deb. (1845) 80, c. 432, 798; C. J. (1887) 111, 116.

equivalent to a rejection of the original question or the amendment respectively (*p*).

In the case of motions dealing with the procedure of the House, where a certain course of proceeding has been rejected on a particular day, it has been allowed to be revived on a subsequent day.

On 8 October 1912, a motion to exempt a bill from interruption under S. O. No. 1 at eleven o'clock on that and the following evening was amended by limiting the motion to that day. On the following day a motion to exempt the same bill from interruption at that sitting was objected to in view of the decision of the House of the previous day. The Speaker ruled, however, that the motion could be made, as by its decision on the previous day the House could not be taken to have precluded itself from reconsidering the question on the following day (*q*). The question "That Mr. Speaker do now leave the chair" (on going into Committee of Supply on the civil services estimates) having been negatived, the Speaker held that he was not precluded from submitting that question on a subsequent day (*r*).

*Repetition of motions which have been negatived.*—The most frequent attempt against the rule is to seek to evade it by raising again with verbal alterations the essential portions of motions which have been negatived. Whether the second motion is substantially the same as the first is one of those questions of degree which present a difficult problem to the Chair. In the following cases the second motion has been ruled to be substantially the same as an earlier motion :—

On 17 May 1870, a motion for an address in favour of emigration was not allowed to be made, as it was substantially the same as a resolution which had been negatived in the same session (*s*). On 9 May 1882, it was ruled by Mr. Speaker that a motion, affirming the necessity of legislation to enable Members duly elected to take their seats, was inadmissible, as an amendment to the same effect, but in different words, had been negatived on 6 March (*t*).

The rule has also been applied to an *amendment* renewing a motion which had been already negatived.

On 18 July 1844, an amendment was proposed to a question by leaving out all the words after "that," in order to add, "Thomas Slingsby Duncombe, Esq., be added to the committee of secrecy on the post-office:" but Mr. Speaker stated that, on 2 July, a motion had been made, "that Mr. Duncombe be one other member of the said committee;" that the question had been negatived; "and that he considered it was contrary to the usage and practice of the House that a question which had passed in the negative should be again proposed in the same session." The amendment was consequently withdrawn (*u*).

The ingenuity with which motions have been framed has sometimes succeeded in withdrawing them from the operation of the rule, as, for example, in the case of:

General Conway's motions on the American War, 22 and 27 February

(*p*) Parl. Deb. (1873) 214, c. 287; Private ruling of May 1897, Decision No. 1162, C. J. (1897) 150 and Notices of Motion (1897), pp. 1616, 1647, and 1721.

(*q*) H. C. Deb. (1912) 42, c. 367.

(*r*) H. C. Deb. (1923) 162, c. 1243.

(*s*) Parl. Deb. (1870) 201, c. 824. See also *ibid.* (1864) 176, c. 497.

(*t*) Parl. Deb. (1882) 269, c. 340. See also Parliamentary Affirmation, *ibid.* (1880) 253, c. 1266; Mr. O'Donnell's suspension, *ibid.* (1881) 261, c. 1985; Railway Servants (Hours of Labour), *ibid.* (1890-91) 349, c. 1176.

(*u*) Parl. Deb. (1844) 76, c. 1021.

1782, C. J. (1780-82) 814, 861; proceedings upon the malt duty in 1833, *ibid.* (1833) 195, 317; and upon the sugar duties in 1845, *ibid.* (1845) 59, 69, 81. Also, in the session of 1845, no less than five distinct motions were made upon the subject of opening letters at the post-office under warrants from the Secretary of State. They all varied in form and matter, so far as to place them beyond the restrictions: but in purpose they were the same and the debates raised upon them embraced the same matters, C. J. (1845) 42, 54, 185, 199, 214.

**Motions and the rule of anticipation.**—A motion must not anticipate a matter already appointed for consideration by the House (*a*), whether it be a bill or an adjourned debate upon a motion.

Mr. Whitley's notice of motion (29 March 1904) calling on the Government to give time for the disposal of the remaining stages of a bill was privately ruled out of order as anticipating the adjourned debate on the motion for committing the bill to a standing committee, Notices of Motions, sess. 1904, p. 946. A motion for a select committee to consider the question of women's franchise was privately ruled out of order (21 February 1895), as anticipating a bill upon the order book, while on 4 March 1903, the Speaker restricted the debate on a motion for a select committee to matters outside the scope of bills on the order book dealing with the same subject, Parl. Deb. (1903) 118, c. 1437.

The fact that a bill has not been printed does not withdraw it from the operation of this rule, Parl. Deb. (1890) 341, c. 762; *ibid.* (1902) 102, c. 379. See also the Speaker's opinion regarding a proposed amendment, mentioned by Mr. Chamberlain in debate, with reference to Mr. Parnell's amendment on the address, 11 January 1881, C. J. (1881) 11, after notice had been given of the Protection of Person and Property (Ireland) Bill, Parl. Deb. (1893-94) 8, c. 294.

Stated generally, the rule against anticipation (which applies to other proceedings as well as motions) is that a matter must not be anticipated if it is contained in a more effective form of proceeding than the proceeding by which it is sought to be anticipated, but it may be anticipated if it is contained in an equally or less effective form. A bill or other order of the day is more effective than a motion; a substantive motion more effective than a motion for the adjournment of the House or an amendment. Thus a motion (other than a motion for leave to bring in a bill) is out of order if it anticipates a notice of motion for leave to bring in a bill (*b*) that includes the subject proposed to be dealt with by the motion. A matter already appointed for consideration by the House cannot be anticipated by a motion (*c*) or an amendment (*d*), while a notice of motion as long as it remains upon the paper, whether for a specified day or not, prevents its subject-matter being discussed by means of an amendment to a motion (*e*) or of a motion for the adjournment of the House (*f*) (see

(*a*) Parl. Deb. (1860) 158, c. 1851; *ibid.* (1874) 219, c. 1054; *ibid.* (1875) 224, c. 915; *ibid.* (1890) 344, c. 307; *ibid.* (1891) 352, c. 1636; *ibid.* (1907) 171, c. 1525; *ibid.* 176, c. 631; *ibid.* (1908) 192, c. 228; H. C. Deb. (1911) 29, c. 1362; *ibid.* 32, c. 2706; *ibid.* (1914) 61, c. 172; *ibid.* (1924-25) 180, c. 1231.

(*b*) Parl. Deb. (1871) 207, c. 500.

(*c*) Parl. Deb. (1908) 192, c. 228 *et seq.*

(*d*) Parl. Deb. (1886) 308, c. 1755.

(*e*) Parl. Deb. (1882) 271, c. 1290; *ibid.* (1887) 310, c. 1830; *ibid.* (1889) 333, c. 851-86; *ibid.* (1890) 66, c. 922; H. C. Deb. (1913) 50, c. 588.

(*f*) For motion waiving this rule for a particular debate, see H. C. Deb. (1941-2) 377, c. 1552.

p. 426), including a motion under S. O. No. 8 (see p. 347). In determining, however, whether a discussion is out of order on the ground of anticipation, the Speaker must have regard to the probability of the matter anticipated being brought before the House within a reasonable time (S. O. No. 9) (*g*). The reference of a matter to a select committee does not prevent the consideration of the same matter by the House (*h*).

In session 1907 a resolution was agreed to declaring that to put a motion upon the paper or to introduce a bill to prevent the discussion of notices of motions for which precedence had been gained in the ballot, or the moving of the adjournment of the House under S. O. No. 8, was hurtful to the usefulness of the House and an infringement of the rights of Members, and a select committee was appointed to consider the procedure of the House in relation to anticipatory motions and bills, C. J. (1907) 96, 302; H. C. 264 (1907) (*i*). In session 1911 the debate on the motion for the adjournment for the Whitsuntide recess was by order of the House not restricted by the rule against anticipation, C. J. (1911) 256.

**Irregular notices.**—As the notice paper is published by authority of the House, a notice of motion or of a question to be put to a Member, containing unbecoming expressions, infringing its rules, or otherwise irregular, may, under the Speaker's authority, be corrected by the clerks (*j*) at the table. These alterations, if it be necessary, are submitted to the Speaker, or to the Member who gave the notice. A notice wholly out of order, as, for instance, containing a reflection on a vote of the House (*k*), may be withheld from publication on the notice paper (*l*), or, if the irregularity be not extreme, the notice is printed, and reserved for future consideration. The precedence to which a notice, if in order, would have been entitled cannot be claimed for it when corrected on a subsequent day (*m*). It is not the duty of the clerks at the table to inform the Member who gave the notice of an informality that it may contain (*n*), but communication regarding an irregular notice or question is made to Members if the pressure of business permits. When a notice publicly given is obviously irregular or unbecoming, the Speaker has interposed, and the notice has not been received in that form (*o*). He has also directed that a notice of motion should not be printed, as being obviously designed merely to give annoyance (*p*). If an objection be raised to a notice of motion upon the notice paper, the Speaker decides as to its regularity;

(*g*) H. C. Deb. (1941-2) 383, c. 533-4.

(*h*) Parl. Deb. (1891) 351, c. 933; H. C. Deb. (1918) 107, c. 430.

(*i*) For debates upon the effect of notices of motions standing upon the Order Book upon debates on motions for the adjournment of the House and upon the power of moving the adjournment of the House under S. O. No. 8, see Parl. Deb. (1897) 46, c. 1349; *ibid.* (1900) 81, c. 1414; *ibid.* (1904) 135, c. 379; *ibid.* (1907) 171, c. 1883.

(*j*) Parl. Deb. (1867) 188, c. 1065; *ibid.* (1871) 206, c. 468; *ibid.* (1871) 207, c. 1881; *ibid.* (1872) 212, c. 700; H. C. Deb. (1919) 113, c. 604; *ibid.* (1921) 147, c. 211.

(*k*) Parl. Deb. (1888) 329, c. 157.

(*l*) Parl. Deb. (1881) 263, c. 1012; *ibid.* (1887) 313, c. 232; *ibid.* (1898) 55, c. 770; H. C. Deb. (1928) 217, c. 861.

(*m*) Parl. Deb. (1884) 288, c. 684.

(*n*) Parl. Deb. (1892) 3, c. 964; *ibid.* (1882) 270, c. 1409; *ibid.* (1906) 158, c. 1163; H. C. Deb. (1920) 134, c. 2100; *ibid.* (1926) 200, c. 547.

(*o*) Parl. Deb. (1861) 161, c. 324; *ibid.* (1907) 170, c. 1451; H. C. Deb. (1927) 205, c. 1630; *ibid.* (1928) 222, c. 1090.

(*p*) Notice of a return of the conviction of Mr. King-Harman for an assault, 21 February 1888, Mr. Speaker's ruling.



and, if the objection be sustained, the notice is amended or withdrawn (*g*). The House has also, by order, directed that a notice of motion be taken off the notice paper (*r*).

#### ALTERATIONS IN THE TERMS OF QUESTION FROM TERMS OF MOTION

The general rule that the question proposed and put from the chair repeats the terms of the motion on which it is based admits of certain recognized exceptions in the following cases, which are dealt with more fully later. Thus on the stages of bills the form of motion for the rejection of a bill, *i.e.* that it be read a second, or the third, time upon "this day six months," is translated by the Speaker into an amendment to the question, for the second or third reading of the bill, expressed in the terms "to leave out the word 'now' and at the end of the question to add the words 'upon this day six months'"; and the question he proposes is "that the word 'now' stand part of the question." In the same way motions giving reasons for the rejection of a bill (p. 498), motions, on going into committee of supply (p. 697), and certain other motions are translated into amendments.

Also, on proposing the question, an opportunity may be taken to rectify any irregularities in a motion which has been moved without notice, or any irregularities which, though notice may have been given, have previously been overlooked. In the House of Commons any such necessary change is within the discretion of the Chair. In the House of Lords it would seem to require the sanction of the House.

In 1794, Earl Stanhope had proposed a resolution with a long preamble, which the Lord Chancellor omitted on putting the question. On a subsequent day a complaint and a motion were made regarding this omission. After a debate, from which it appeared that the words omitted had been of an objectionable character, and that the Lord Chancellor had collected the unanimous opinion of the House for their omission, the motion was superseded by adjournment (*s*).

#### MOVING OF MOTIONS

**Proposal of motions.**—When a Member is at liberty to make a motion, he may speak in its favour before he actually proposes it. But a speech is only allowed upon the understanding, first, that he speaks to the motion; and, secondly, that he concludes by proposing his motion formally. Even when notice of a motion is not required (see p. 372) the motion should be placed, in print or writing, in the Speaker's hands; as, except in the event of any informality in the form of the motion, which may necessitate the Speaker's intervention, or may compel him to decline to put the question from the chair, the Speaker proposes the question in the words of the mover.

**Seconding of motions.**—*Lords.*—In the Upper House any Lord may submit a motion or amendment for the decision of their Lordships

(*g*) Parl. Deb. (1876) 228, c. 1183; *ibid.* (1880) 250, c. 1313; *ibid.* (1882) 267, c. 388.

(*r*) C. J. (1835) 435.

(*s*) 31 Parl. Hist. 149, 197; Campbell, *Lives* vi, 271.

without a seconder,—the only motion requiring a seconder, by usage, being that for the address in answer to the King's speech.

*Commons.*—In the Commons, after a motion has been made or an amendment has been proposed, it must (except as stated below) be seconded by another Member; otherwise it is immediately dropped and further debate must be discontinued, as no question is before the House. When a motion or amendment is not seconded (*t*), or the seconder's speech is not finished at the time for the interruption of the debate (*u*), no entry appears in "The Votes and Proceedings," as the House is not put in possession of it and *res gestæ* only are entered. In the case of a substantive motion the Speaker satisfies himself that the motion has been formally seconded, before he puts the question; but where an unopposed return is moved, or other formal motion made, the formality of seconding the motion is not generally observed, but is taken to be tacitly complied with. Orders of the day and motions in committee do not require a seconder.

## B. QUESTIONS

### PROPOSAL OF QUESTION UPON A MOTION

In the Lords, when a motion has been made, a question is generally proposed "that that motion be agreed to": but on the stages of bills and on some other occasions the motion is put directly as a question. In the Commons, when the motion has been seconded, it merges in the question, which is proposed by the Speaker to the House and read by him; after which the House is in possession of the question, and must dispose of it in one way or another before it can proceed with any other business. At this stage of the proceeding the debate upon the question arises in both Houses. The mode in which the determination of the House upon a question is expressed and collected is explained on p. 386.

### WITHDRAWAL OF MOTIONS

The Member who has proposed a motion can only withdraw it by leave of the House, granted without any negative voice. This leave is signified, not upon question, as is sometimes erroneously supposed, but by the Speaker taking the pleasure of the House. He asks, "Is it your pleasure that the motion be withdrawn?" If no one dissents, he says, "The motion is by leave withdrawn": but if any dissentient voice be heard, or a Member rises to continue the debate, he proceeds to put the question as the motion cannot now be withdrawn (*a*), even though the dissentient subsequently signifies that he has no longer any objection to that course. An amendment can be withdrawn in the same way (*b*), but neither a motion nor an amendment can be withdrawn in the absence

(*t*) Parl. Deb. (1865) 177, c. 1528; *ibid.* (1904) 133, c. 322; *ibid.* (1905) 147, c. 1040; *ibid.* (1906) 164, c. 212; *ibid.* 166, c. 1222, 1660; *ibid.* 167, c. 736; H. C. Deb. (1910) 15, c. 114.

(*u*) H. C. Deb. (1917) 93, c. 807.

(*a*) Parl. Deb. (1882) 274, c. 1360.

(*b*) In asking leave to withdraw, a Member is not entitled to make a speech, Parl. Deb. (1906) 162, c. 255; *ibid.* 164, c. 803; H. C. Deb. (1915) 76, c. 1219.

of the Member who moved it (*c*). Occasionally a motion (*d*) or amendment (*e*) is, by leave, withdrawn, and another motion or amendment substituted, in order to meet the views of the House, as expressed in debate; but that course can only be taken with the general assent of the House. Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn, or negatived (*f*); as the question on the amendment stands before the original question.

#### MODES OF SUPERSEDING QUESTION

The modes of evading or superseding a question are: (1) by moving the adjournment of the House or of the debate (the so-called "dilatory" motions); (2) by moving the previous question (see p. 383); and (3) by amendment.

(1) **By adjournment of the House or debate.**—In the midst of the debate upon a question any Member may move, "That this House do now adjourn," or "That the debate be now adjourned," not by way of amendment to the original question, but as a distinct question, which interrupts and supersedes that already under consideration. The use of the motion for the adjournment of the House to supersede another question must be distinguished from its use as a substantive motion, *i.e.* before or between the orders of the day, when it can only be moved by a member of the Government (see p. 363). It need scarcely be explained that a dilatory motion cannot be made while a Member is speaking, but can only be offered by a Member who, on being called by the Speaker in the course of the debate, is in possession of the House. If this second question be resolved in the affirmative, the original question is superseded; and (if the motion was for the adjournment of the House) the House must immediately adjourn and all the business for that day is at an end (*g*), or (if it was for the adjournment of the debate) the next order or notice of motion is proceeded with.

In the Lords, a future day may be specified in the motion for adjournment (*h*), but in the Commons, the motion for adjournment, in order to supersede a question, must be simply that the House do *now* adjourn (or that the debate be now adjourned), and cannot be coupled with any prefatory words (*i*); nor is it allowable to move that the House do adjourn (or that the debate be adjourned) to any future time specified,

(*c*) Parl. Deb. (1858) 151, c. 952; *ibid.* (1860) 159, c. 1309; *ibid.* (1867) 186, c. 887; *ibid.* (1879) 247, c. 841; H. C. Deb. (1915) 73, c. 1792. On 8 December 1943, during the absence through illness of the mover, the seconder was permitted to withdraw an amendment, H. C. Deb. (1943-4) 395, c. 1074.

(*d*) Parl. Deb. (1872) 212, c. 219; C. J. (1877) 301; *ibid.* (1895) 48; *ibid.* (1916) 199; H. C. Deb. (1916) 85, c. 2647.

(*e*) Parl. Deb. (1847) 91, c. 1236; C. J. (1893-94) 360. An amendment has been withdrawn after the words proposed to be left out of the original question have been negatived and the question for adding the words of the amendment has been proposed, C. J. (1882) 172.

(*f*) C. J. (1830-31) 912; Parl. Deb. (1876) 227, c. 787; *ibid.* 230, c. 1026; C. J. (1870) 270; *ibid.* (1895) 48.

(*g*) C. J. (1854-55) 367; *ibid.* (1860) 393.

(*h*) L. J. (1881) 72.

(*i*) Parl. Deb. (1891) 353, c. 1246.

or to move an amendment to that effect to the question for adjournment (*j*). A motion for the adjournment of the debate, upon a question for the adjournment of the House, will not be entertained (*k*); nor can a motion for the adjournment of the House be made while a question for the adjournment of the debate is under discussion (*l*).

When the House is adjourned in the course of a debate by agreeing to a motion for adjournment (or through the absence of a quorum, see p. 311), if the original question has not been proposed to the House by the Speaker, it is not entered in the Votes, as the House has not been put in possession of the question before the adjournment; but if the question has been proposed from the chair, the question, having been entered on the minutes, is of course printed in the Votes. If the proceeding superseded by adjournment be a motion, to bring the matter again before the House a notice of the motion must be renewed (see p. 366); if an order of the day is so superseded, the order of the day must be revived (see p. 365).

*Restrictions on motions for adjourning the House and the debate.*—When a motion for adjournment has been negatived, it may not be proposed again without some intermediate proceeding (*m*); hence arises the practice of moving alternately, "That this House do now adjourn," and "That the debate be now adjourned" (*n*). A Member who has moved the adjournment of the House is not entitled to move the adjournment of the debate, as he has already spoken to the main question (*o*). The latter motion, if carried, merely defers the decision of the House (an opportunity being given for fixing a day for the resumption of the debate when the decision to adjourn it is announced from the chair), while the former, as already explained, supersedes the question altogether; and therefore Members who only desire to postpone the debate to another day, should refrain from voting for an adjournment of the House, as that motion, if carried, would supersede the question which they may be prepared to support (*p*). If, at the moment for the interruption of business under the standing orders (see p. 303), a motion for the adjournment of the House or of the debate has been proposed from the Chair, such motion lapses without question put pursuant to the provision in S. O. No. 1. Other restrictions, placed upon the use of these motions for purposes of obstruction, are treated among the rules of debate (*q*) (see pp. 425-6).

(2) *Previous question.*—The object of the previous question is to withhold from the decision of the House a motion that has been proposed from the chair, by a motion which compels the House to decide, in the first instance, whether the original motion shall or shall not be sub-

(*j*) 2 Hatsell, 113.

(*k*) Parl. Deb. (1857) 144, c. 1906; *ibid.* (1905) 146, c. 1071; H. C. Deb. (1914-16) 75, c. 1294.

(*l*) Parl. Deb. (1881) 260, c. 1617.

(*m*) 2 Hatsell, 109, *n*; Colchester, ii. 129.

(*n*) See proceedings, 23 November 1819, Parl. Deb. (1819-20) 41, c. 136; C. J. (1851-52) 216; *ibid.* (1857) 263; *ibid.* (1862) 388; *ibid.* (1881) 49-50.

(*o*) Parl. Deb. (1866) 184, c. 1450; H. C. Deb. (1928) 215, c. 593.

(*p*) An instance of this occurred on 23 March 1848, on a motion relative to the game laws, Parl. Deb. (1848) 97, c. 963; and again on 2 March 1875, on Mr. Fawcett's motion relating to education in rural districts, *ibid.* (1875) 222, c. 1122.

(*q*) See Mr. Speaker's evidence before committees on public business, 1848 and 1854, H. C. 644 (1847-8) *ibid.* 212, p. 44 (1854), and Report of Committee on Public Business, 1857, H. C. 261, p. iii (1857, sess. II).

mitted to the vote of the House. In the Lords the Lord Speaker puts the question, "whether the original question be *now* put" (r). In the Commons the question proposed on this motion is, "That that question be *not now* put" (s); and, if it be resolved in the affirmative, the Speaker is prevented from putting the original question, as the House has thus refused to allow it to be put. The original motion may, however, be brought forward again on another day, as the decision of the House merely binds the Speaker not to put the question thereon at that time. If the previous question be resolved in the negative, the original question on which it was moved must be put forthwith, no amendment, debate or motion for adjournment being allowed, because, as the House has negatived the proposal, "That that question be *not now* put," the question must be put at once to the vote.

The Speaker, with the concurrence of the House, first put the previous question in these words, 20 March 1888, C. J. (1888) 112, because the motion, "That that question be now put," is akin to the closure motion (see p. 449).

The new form of motion also enables the Members who support the previous question to vote "aye," when that question is put from the Chair. For illustrations of the former practice, see 2 Hatsell, 122, n.; Lex. Parl. 292; C. J. (1860) 316; Sidmouth, ii. 136; Eldon, i. 232.

The motion, "That the orders of the day be read," is obsolete as a substantive motion; though it survives in the form of an amendment, "That this House do pass to the orders of the day," moved upon a motion interposed before the ordinary business of the day, such as a privilege motion, C. J. (1878) 196; *ibid.* (1887) 358. This motion, when agreed to, has the same effect as the previous question.

*Limitation on use of previous questions.*—The previous question has been moved upon the various stages of a bill (t), but it cannot be moved upon an amendment (u); though, after an amendment has been disposed of the previous question can be moved on the main question (as amended) (a). The previous question cannot be moved upon a motion relating to the transaction of public business or the meeting of the House (b), or in any committee (c) (see p. 572). The motion for the previous question cannot be amended, but may be withdrawn (d). It may be, however, superseded by a motion for adjournment, and debate thereon may be adjourned (e).

(3) **Amendment.**—The general practice in regard to amendments is explained on pp. 392-400; and here such amendments only will be men-

(r) L. J. (1839) 581; *ibid.* (1842) 87; *ibid.* (1878) 22. This form of previous question was used by the Commons, 6 September 1641, C. J. (1640-42) 281.

(s) C. J. (1890-91) 96; *ibid.* (1893-94) 631; *ibid.* (1905) 3, 53.

(t) C. J. (1547-1628) 226, 825; *ibid.* (1657-59) 420; *ibid.* (1660-67) 421; *ibid.* (1765-66) 418; *ibid.* (1844) 504; *ibid.* (1857-58) 220; *ibid.* (1861) 103, 135, 177; *ibid.* (1875) 356; *ibid.* (1880) 261, etc.

(u) 2 Hatsell, 116.

(a) Previous question moved, after amendments proposed and negatived, C. J. (1862) 129; *ibid.* (1863) 268. Previous question moved to main question, as amended, *ibid.* (1839) 496. See also *ibid.* (1864-65) 45, 179; Parl. Deb. (1864) 174, c. 1376; C. J. (1865) 117; Parl. Deb. (1872) 212, c. 926.

(b) Speaker's private ruling, 30 May 1892.

(c) The report of the committee on privilege (Mr. Gray), 1882, was recommitted to enforce this rule, C. J. (1882) 509.

(d) H. C. Deb. (1942-3) 386, c. 252-264.

(e) C. J. (1876) 45, etc.

tioned as are intended to evade an expression of opinion upon the main question by entirely altering its meaning and object. This is effected by moving the omission of all the words of the question after the word "that" at the beginning and by the substitution of an alternative proposition (which must, however, be relevant to the subject of the question).

In the case of amendments of this type the proposal of the question "that the words proposed to be left out stand part of the question" places before the House two alternative propositions, contained in the motion and in the amendment respectively, between which the House has to make a preliminary choice before deciding finally to agree to either of them (see p. 376). Consequently, if the words proposed to be left out are ordered *not* to stand part of the question, this vote does not by itself express a decision against the motion (*f*), but only a preference for taking a decision upon the alternative proposition contained in the amendment. If, however, the words of the amendment are added, and the main question, as so amended, is agreed to, the original motion *may* be regarded as having been negated by implication. This depends both upon the fact that the amendment has been agreed to and upon the fact that its terms are such as to imply disagreement with the motion. A motion, from which all the words after "That" have been left out without other words having been added, has not in strictness been decided and may be submitted again in substance to the decision of the House (see p. 394) (*g*). So also can a motion which has been superseded by a temporizing or non-committal amendment (see p. 500) (*h*), or by a conditional prohibition, as soon as that condition has ceased to operate. But a motion which has been superseded by a "hostile" amendment, i.e., one which contains a conflicting or incompatible proposition, cannot be repeated in the same session (see p. 376). Even when such an amendment has not been fully agreed to by the House, the fact that the words which it proposed to leave out have been omitted has been treated in practice as equivalent to a decision against the original motion (*i*). It is important to observe that the question whether the proposition contained in a superseded motion has been decided depends, not upon the fact that its words have been omitted, but rather upon the nature of the amendment by which the motion has been superseded.

There are many precedents of this mode of dealing with a question (*k*), which is a recognized parliamentary form. The proposed amendment should not be confined to a mere negation of the terms of the motion, as the proper mode of expressing a contrary opinion is by voting against a motion without seeking to amend it.

**Consideration of questions interrupted.**—These are the modes by which a question may be intentionally avoided or superseded; but

(*f*) C. J. (1857-58) 10 & 48.

(*g*) But see Private Ruling of March 1897 (Decision 1162).

(*h*) H. C. Deb. (1912-13) 42, c. 367; C. J. (1837-38) 418 & 541.

(*i*) Private ruling of March 1897 (Decision 1162), and C. J. (1897) 150; C. J. (1924) 128, 129, and H. C. Deb. (1924) 173, c. 67.

(*k*) C. J. (1741-45) 650; *ibid.* (1765-66) 70; *ibid.* (1796-97) 203; *ibid.* (1837-38) 403; *ibid.* (1867) 116; *ibid.* (1878) 240. Cf. proceedings in May, 1802, on motions and addresses condemning Mr. Pitt's policy, C. J. (1801-02) 419, 450; 36 Parl. Hist. 598-654, 686; 3 Stanhope's Pitt, 375-79; L. J. (1801-02) 602-03, and proceedings in May, 1806, on Earl St. Vincent's naval administration, Parl. Deb. (1806) 7, c. 208.

the consideration of a question is also liable to casual interruption and postponement from other causes, which are described on p. 315.

#### COMPLICATED QUESTIONS

The ancient rule that when a complicated question is proposed to the House, the House may order such question to be divided, is observed in the following manner. When two or more separate propositions are embodied in a motion or in an amendment, the Speaker calls the attention of the House to the circumstance; and, if objection be taken (*l*), he puts the question on such propositions separately, restricting debate to each proposition in its turn (*m*); though this course is rarely adopted, because it is generally recognized that, if a motion formed of a series of paragraphs is submitted to the House, the question should be proposed on the principal paragraph, which determines the decision of the House upon the various proposals contained in the whole motion. If the necessity should arise, separate subjects contained in a motion can be placed *seriatim* before the House by way of amendment.

#### PUTTING OF QUESTION AT CLOSE OF DEBATE

When debate on a question is closed, the question must be put, which is done in the following manner. The Speaker, rising from the chair (*n*), states or reads the question to the House, beginning with "The question is, that." This form of putting the question is always observed, and precedes (or is supposed to precede) every vote of the House, except in cases where a vote is a formal direction in virtue of previous orders.

**Manner of putting question.**—In the Lords, when the question has been put, the Speaker says, "As many as are of that opinion say, 'Content,'" and "As many as are of a contrary opinion say, 'Not content;'" and the respective parties exclaim, "Content," or "Not content," according to their opinions. In the Commons the Speaker takes the sense of the House by desiring that "As many as are of that opinion say, 'Aye,'" and "As many as are of the contrary opinion say, 'No.'" On account of these forms the two parties are distinguished in the Lords as "contents" and "not contents" and in the Commons as "ayes" and "noes." When each party have responded according to their opinion, the Speaker endeavours to judge from the loudness and general character of the opposing exclamations, which party have the majority. As his judgment is not final, he expresses his opinion thus: "I think the ('contents,' or) 'ayes' have it;" "I think the ('not contents,' or) 'noes' have it." If the House acquiesce in this decision, the question is said to be "resolved in the affirmative" or "negative," according to the supposed majority on either side; but if the party thus declared to be the minority dispute the fact, they say, "The 'contents'

(*l*) Such objection is not permissible on motions giving special facilities for the transaction of Government business (see p. 359), or in committee of the whole House.

(*m*) Parl. Deb. (1888) 324, c. 1828. See also Mr. Speaker's remarks, *ibid.* (1905) 149, c. 897; H. C. Deb. (1912) 43, c. 1994.

(*n*) On 9 April 1866 the Speaker, on returning to the House after an illness, said that he should claim the indulgence of sitting while putting the questions. C. J. (1866) 197.

(or 'not contents'), the 'ayes' (or 'noes') have it," as the case may be. In this case the Speaker in the Commons says, "Clear the lobby," in order to start the process of counting the numbers on either side, which is termed a division. In the Lords, the Lord on the Woolsack says, "Clear the Bar." (see p. 400).

**Voice and vote.**—Members must bear in mind that their opinion is collected from their voices in the House, and not merely by a division; and that, if their voices and their votes should be at variance, the voice will bind the vote. A Member therefore who gave his voice with the "ayes" (or "noes") when the Speaker took the voices, is bound to vote with them.

On the report of the Holyrood Park Bill, 10 August 1843, a Member called out with the "noes," "The 'noes' have it," and thus forced that party to a division, although he was about to vote with the "ayes" and went out into the lobby with them. On his return and before the numbers were declared by the tellers, Mr. Brotherton addressed the Speaker, sitting and covered (the doors being closed), and claimed that the Member's vote should be reckoned with the "noes." The Speaker put it to the Member whether he had said, "The 'noes' have it;" to which he replied that he had, but without any intention of voting with the "noes." The Speaker, however, would not admit of his excuse, but ordered that his vote should be counted with the "noes," as he had declared himself with them in the House. This decision has been repeated on subsequent occasions (o) and the Speaker has condemned this practice of forcing a division as "irregular and unparliamentary." (p).

The objection that a Member's vote was contrary to his voice should be taken either before the numbers are reported by the tellers or immediately afterwards; it will not be entertained after the declaration of the numbers from the chair, (q) (see p. 406).

A Member who has made a motion is afterwards entitled to vote against it, provided he gives his voice with the "noes" when the question is put from the chair (r).

#### ORDERS AND RESOLUTIONS

Every question, when agreed to, assumes the form either of an order or of a resolution of the House. One or the other of these terms is applied in the records of the House to every motion which has been agreed to, and the application of the term is carefully regulated with reference to the content of the motion. By its orders the House directs its committees, its members, its officers, the order of its own proceedings and the acts of all persons whom they concern; by its resolutions the House declares its own opinions and purposes. Orders and resolutions are sometimes declared to have been agreed to *nemine dissente* in the House of Lords and *nemine contradicente* in the House of Commons. Entries to this effect are made in the case of addresses of congratulation

(o) C. J. (1854) 373; *ibid.* (1864-65) 359; Parl. Deb. (1864) 176, c. 235; *ibid.* (1906) 158, c. 1052; C. J. (1912-13) 378; H. C. Deb. (1912) 42, c. 2133.

(p) Parl. Deb. (1866) 183, c. 1919.

(q) Parl. Deb. (1856) 141, c. 1103.

(r) Parl. Deb. (1876) 227, c. 473; 25 July 1879, Sir H. Selwin Ibbetson, in committee of supply, Votes (1878-79) 697.



or condolence to the reigning sovereign (s) and of messages of a similar character to other members of the royal family (t). They have also been used in the House of Commons in the case of resolutions condemning a breach of privilege and the consequential order for the attendance of the offenders (u). Votes of thanks (a), an address for a monument to a deceased public servant (b), a resolution of the House (c), the grant of a vote of credit (d) and the third reading of a bill have been similarly recorded (e). The addition of these words is made on the direction of the Speaker or chairman, who does not assent to the application for their use if a single dissentient voice is raised (f).

**Discharge of orders and rescission of resolutions.**—The present procedure by which the House varies its previously expressed opinions, directions or proceedings varies according to the object to be attained. The forms of procedure are:—discharge in the case of an order; repeal in the case of a standing order (or, in the Lords, vacation); an order that proceedings be null and void; and rescission in the case of a resolution.

*Discharge of an order.*—The discharge of an order is the indispensable preliminary to the making of a different order with regard to the same subject.

Thus the order for a paper to lie upon the table is sometimes discharged, whereupon another order is made by the House that the paper be withdrawn (C. J. (1921) 90, etc.). Similarly, the House has discharged the order for the second reading of a bill, and this has been followed by an order for the withdrawal of the bill (C. J. (1921) 89, 132, etc.). Again, when the order for the second reading of a bill was read, the Speaker called the attention of the House to the fact that the bill should have originated in committee of the whole House, whereupon the order was discharged and the bill withdrawn (C. J. (1921) 191). On other occasions an order has been discharged without further action, e.g., for printing a paper or for a return (C. J. (1921) 96; *ibid.* (1922) 147; *ibid.* (1926) 418). Part of an order has also been discharged (e.g., C. J. (1909) 211; *ibid.* (1920) 58).

There is a difficulty in discharging an order for *an address to the Crown*, after it has been presented to the sovereign.

Thus, in 1850, an address having been agreed to for discontinuing the collection and delivery of letters on Sunday and for inquiry into the subject, another address was agreed to, some time afterwards, for inquiring whether Sunday labour might not be reduced in the post-office, without completely putting an end to the collection and delivery of letters (g). In 1856, when an address had been voted on the subject of national education in Ireland in which the majority of the House did not concur, instead of discharging the order for the address, a resolution was agreed to for the purpose of qualifying the opinions embodied in the address; and her Majesty's answer was framed in the spirit of the resolution, as well as of the address (h).

(s) L. J. (1901) 8; C. J. (1901) 6, etc.

(t) C. J. (1837) 493; *ibid.* (1910) 153.

(u) C. J. (1901) 414, 418, etc.

(a) C. J. (1856) 186; *ibid.* (1919) 285, 286, etc.

(b) C. J. (1920) 378, etc.

(c) C. J. (1905) 95; *ibid.* (1921) 390, etc.

(d) C. J. (1914) 426.

(e) C. J. (1688-93) 280; *ibid.* (1857) 110; *ibid.* (1884) 321.

(f) Parl. Deb. (1884) 289, c. 1561; *ibid.* (1907) 178, c. 463.

(g) C. J. (1850) 383, 509; Parl. Deb. (1850) 111, c. 1404.

(h) C. J. (1856) 272, 289, 298.

*Proceedings null and void.*—An order declaring proceedings to be null and void is employed where there has been an inadvertence or some form of irregularity in procedure (i). The reason for resorting to it is either (i) that there is no resolution which can be rescinded or order which can be discharged, as in the instance of the 22 February 1939 (j), or (ii) that the *status quo ante* cannot be restored merely by rescinding the resolution or discharging the order, as where a resolution is irregularly reported from a committee. If, however, the *status quo* could be restored merely by discharging an order, there would be no question of annulling and avoiding the proceedings.

*Rescission of resolutions.*—There is nothing in the practice of either House to prevent the rescission of a resolution or discharge of an order of a previous session, when such is held to be of continuing force and validity, or of a standing order. But the rescission of a resolution or discharge of an order of the current session at one time offered great difficulty when Parliament was regarded rather as a court of law than a legislative body. The rule was urged (2 April 1604), "That a question, being once made and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the House" (k). Also by a rule formerly in force, a second bill, at variance with the provisions of a bill passed during the same session, could not be introduced (see p. 491); and rescission is opposed, certainly, to the spirit of the existing rule that no question shall be offered which is substantially the same as one on which judgment has been expressed during the current session (see p. 375). But the practical inconvenience of a rigid rule of consistency, especially where the House as a whole wishes to change its opinion, has proved too great for a body confronted with the ever-changing problems of government; and the rule prohibiting reconsideration of a decided question has come to be interpreted strictly according to the letter so as not to prevent open rescission when it is decided that it is desirable.

Technically, indeed, the rescinding of a vote is the matter of a new question; the form being to read the resolution of the House and to move that it be rescinded (l); and thus the same question which had been resolved in the affirmative is not again offered, although its effect is annulled.

*Restrictions on power of rescission.*—The power of rescission has only been exercised in the case of a resolution resulting from a substantive motion, and even in such a case sparingly (m). It cannot be exercised merely to override a vote of the House, such as a negative vote. To do so indirectly, by proposing the negatived question a second time for the decision of the House, would be, as stated earlier, contrary to the established practice of Parliament. Sufficient variation would have to be made not only from the form but also from the substance of the

(i) C. J. (1938-9) 95, 96, etc.

(j) C. J. (1938-9) 95, 96, etc.

(k) C. J. (1547-1628) 162.

(l) C. J. (1867-68) 132 and 145; see also *ibid.* (1882) 346.

(m) C. J. (1834) 59; *ibid.* (1864-65) 463; *ibid.* (1867-68) 145. Resolution and judgment of House of Lords upon a Report from the committee of privileges, L. J. (1914) 196. See also Colchester, ii. 9, 12.

rejected question to constitute the second question a new question. Examples of attempts to do this are given on p. 377.

Similarly, the House of Commons has shown strong objection to rescinding a vote by which the House has made an amendment to a resolution.

On 11 November 1912, an amendment was made to a resolution reported from a committee of the whole House authorizing the financial provisions embodied in a bill. Subsequently the Government desired to rescind this amendment and proposed to make a motion with that object before the consideration of the resolution, as amended, was resumed. Objection was taken to this mode of procedure, but the Speaker pointed out that, the amendment having been made, the House could not reconsider its decision on the further consideration of the resolution. The motion for rescission having been made, an amendment was proposed to the question affirming the principle that a question which has once passed in the affirmative or negative should not be again proposed or questioned in the same session. Upon this amendment a debate arose and the Speaker had to adjourn the House in consequence of grave disorder arising. On the following day, after the Speaker had addressed the House on the situation that had arisen on the previous day and the possibility of finding a solution of the difficulty that would be in accordance with old precedents, the amendment was not proceeded with. The resolution, as amended, was subsequently disagreed to and a new resolution differing from the original resolution was proposed in a committee of the whole House and agreed to, and the necessary amendments were made in due course in the bill (*n*).

*Notice necessary to rescind a resolution.*—Notice is required of a motion to rescind a resolution (*o*), or to expunge or alter an entry in the "Votes and Proceedings" (*p*), and in no circumstances is it competent for the House to rescind a resolution during the sitting when the resolution was agreed to (*q*).

Notice, however, was not required for a motion to rescind a resolution which affected the seat of a Member, as being a matter of privilege, which arose out of the proceedings in which the House was then engaged, *Parl. Deb.* (1880) 253, c. 644.

*Modification of resolution.*—A motion modifying a resolution of the same session, by omitting or altering subsidiary portions of it, is in order so long as it is not sought to reverse it in substance. And a motion has been allowed reversing the effect of a previous decision on the ground of its inapplicability to changed circumstances.

Thus, a resolution having been agreed to which condemned an official appointment, the House by a subsequent resolution withdrew the censure which the previous resolution had conveyed (*r*). Under the Government of India Act, 1919, s. 44, rules might be laid before both Houses by direction of the Secretary of State for India, and in that case the rules could not

(*n*) C. J. (1912-13) 404, 408, 409, 410, 414, 416; H. C. Deb. (1912) 43, c. 1993, 2090; *ibid.* 44, c. 36, 121. See also *ibid.* (1918) 105, c. 1956.

(*o*) *Parl. Deb.* (1887) 313, c. 1124.

(*p*) *Parl. Deb.* (1882) 271, c. 1268; *ibid.* (1884-85) 294, c. 1423; H. C. Deb. (1909) 7, c. 2303. On 27 June 1884, a motion to omit "*Nem. Con.*" (see p. 387) from the entry in the "Votes" of the third reading of the Representation of the People Bill, was brought forward without notice as privilege, C. J. (1884-85) 324.

(*q*) *Parl. Deb.* (1854-5) 138, c. 1307.

(*r*) C. J. (1877) 345, 367.

be made unless they had been approved by both Houses, either without modification or only with modifications and additions to which both Houses agreed. In session 1920, the House of Lords approved of the rules, as laid, but the approval of the House of Commons was given subject to certain modifications. The approval of the House of Lords was not rescinded, but that House passed a resolution agreeing to the modifications, subject to which the draft rules had been approved by the House of Commons, and approving the draft rules as so modified (s). A similar course was followed in the case of the London and Home Counties Electricity District Order, 1925 (t). The effect of a resolution, by which the House determined that no legislation should be entertained, during the session, regarding traffic in intoxicating liquor, until provisions dealing with that subject had been placed before the House by the Government, was modified by a subsequent resolution which declared that, as the House was made aware that the Government did not intend to undertake legislation regarding the liquor traffic, the House was free to deal therewith (u).

*Reversal of decision.*—Attempts to reverse or override resolutions or orders by proposing new questions which seek to nullify a previous decision may, without actually proposing the same question, amount to an indirect form of rescission. Although an amendment which superseded a motion for the second reading of a bill has not been agreed to by the House, it has prevented an amendment being proposed to a subsequent bill which would have had the effect of reversing the implied decision of the House against a particular provision of the bill.

Thus in session 1924, a reasoned amendment, directed against one clause of the Rent and Mortgage Interest Restrictions Bill, having been moved on second reading, and the question for the words "be now read a second time" standing part being negatived, without any further proceedings, an amendment seeking to introduce into a second bill the substance of the clause, against which the reasoned amendment to the earlier bill was directed, was ruled out of order, Rent and Mortgage Interest Restrictions Bill and Prevention of Eviction Bill, C. J. (1924) 128 & 129; H. C. Deb. (1924) 173, c. 67.

But after a reasoned amendment on second reading had been negatived an Instruction on similar lines was allowed (a).

With regard to the whole matter it may be stated generally that the reason why motions for open rescission are so rare and why the rules of procedure carefully guard against the indirect rescission of votes, is that both Houses instinctively realize, as a precedent referred to above shows, that parliamentary government requires the majority to abide by a decision regularly come to, however unexpected, and that it is unfair to resort to methods, whether direct or indirect, to reverse such a decision. The practice, resulting from this feeling, is essentially a safeguard for the rights of the minority, and a contrary

(s) L. J. (1920) 319, 343; C. J. (1920) 316; H. L. Deb. (1920) 41, c. 542.

(t) L. J. (1924-25) 287, 327; C. J. (1924-25) 349; H. L. Deb. (1924-25) 62, c. 505.

(u) C. J. (1890) 214, 257; Parl. Deb. (1890) 343, c. 1170.

(a) H. C. Deb. (1925) 182, c. 517.

practice is not normally resorted to, unless in the circumstances of a particular case those rights are in no way threatened.

### C. AMENDMENTS TO QUESTIONS, AND AMENDMENTS TO PROPOSED AMENDMENTS

As indicated earlier (p. 372) an amendment is a subsidiary motion, moved in the course of debate upon another motion, which interposes a new cycle of debate and decision between the proposal and decision of the main motion and its question. In its turn the debate on an amendment may be similarly intercepted by the proposal of and decision upon a further subsidiary amendment (amendment to an amendment), or it may be superseded in one of the ways mentioned above, though not by the previous question (p. 383).

Some reference has already been made to the use of a particular mode of amendment for the purpose of superseding the question upon which it is moved (pp. 384-5). Here amendments will be treated primarily from the point of view of formal procedure, but a preliminary word may be said about the principal distinction between the objects of amendments and the resulting effect upon the scope of debate.

#### OBJECT OF AN AMENDMENT AND EFFECT ON DEBATE

The object of an amendment may be either to modify a question in such a way as to increase its acceptability, or to present to the House a different proposition as an alternative to the original question.

The latter purpose may be effected by moving to omit all the words of the question after the first word, "That," and to substitute in their place other words of a different import (see p. 385). In that case the debate that follows is not restricted to the amendment, but includes the purpose both of the amendment and of the motion, both matters being under the consideration of the House as alternative propositions. If it be intended only to modify the question by leaving out or adding words, debate should be restricted to the desirability of the omission or the addition of those words. Similarly, if it be intended to leave out certain words only and substitute other words, then, although both the original and the proposed words are equally under consideration, debate should not range over the other words of the motion to which the amendment is not directed.

#### WHEN NOTICE OF AMENDMENTS IS NECESSARY

Previous notice of a matter brought before the House by way of amendment is, as a rule, unnecessary, and an amendment which appears upon the paper can be moved by any Member entitled to speak to the question before the House, if the Member who gave notice of the amendment does not rise and move it. When, however, notice of an amendment is required (see p. 373), as, for instance, of amendments on going into Committee of Supply (p. 351), of clauses on the consideration of a bill by the House (p. 536), of the names of Members to be nominated by way of amendment

on a select committee (p. 528), and, under certain conditions, of an amendment to an instruction (p. 516), the amendment can be moved only by the Member in whose name it stands upon the notice paper (b).

#### ORDER IN MOVING AMENDMENTS

The time for moving an amendment is after a question has been proposed by the Speaker, and before it has been put. A Member who has given notice of an amendment is not entitled to precedence on that account or to be heard before a Member who rises to speak to the question (c). According to the rules of debate, the Member who first rises and is called by the Speaker, being in possession of the House, is entitled to conclude with any motion which may properly be made at that time. Nor, though a contrary practice prevails in proceedings on a bill (see p. 518), if a series of amendments are proposed to a motion, can Members claim, unless they rise to speak, to be called in the order in which their notices stand upon the notice paper (see pp. 419-20).

#### MODES OF AMENDMENT

Amendments may be classified into three modes : (1) by leaving out certain words ; (2) by leaving out certain words in order to insert or add others ; and (3) by inserting or adding certain words. The method of proposing the questions upon each of the three modes is as follows :—

**(1) Amendment to leave out words.**—When the proposed amendment is to leave out certain words, the Speaker says, “ The original question was . . . ” (stating the question at length). “ Since which, an amendment has been proposed to leave out the words . . . ” (which are proposed to be omitted). He then puts the question, “ That the words proposed to be left out stand part of the question.” If that question be resolved in the affirmative, it shows that the House prefers the original question to the amendment and the question, as first proposed, is put by the Speaker. If, however, the question, “ That the words stand part of the question,” be negatived, the question is put with the omission of those words, unless another amendment be then moved for the insertion or addition of other words.

It is not competent to move to leave out all the words of a question. The initial word “ That ” must, at least, be retained.

**(2) Amendment to leave out words and to insert or add others.**—When the proposed amendment is to leave out certain words in order to insert or add others, the proceeding begins in the same manner as the last. If the House resolves, “ That the words proposed to be left out stand part of the question,” the original question is put ; but if it resolves that such words shall not stand part of the question, by negativing that proposition when put, the next question proposed is that the words proposed to be substituted “ be inserted (or added) instead thereof.” This latter question, being resolved in the affirmative, the main question, so amended, is put.

(b) Parl. Deb. (1893-94) 9, c. 1663.

(c) Parl. Deb. (1846) 84, c. 641 ; *ibid.* (1861) 163, c. 1424, 1486 ; *ibid.* (1878-79) 246, c. 265 ; *ibid.* (1880) 250, c. 80 ; *ibid.* (1883) 282, c. 1869.

*Rejection both of amendment and original question.*—It is important to bear in mind that the rejection of an amendment (even an amendment to substitute a complete alternative proposition) does not constitute a final decision upon the original motion, but that a further question has to be put upon this expressly for the purpose of securing such a decision. For example, it is sometimes erroneously supposed that a Member, who is adverse both to the original question and to the proposed amendment, would express an opinion favourable to the question by voting "That the words proposed to be left out stand part of the question." By such a vote, however, he merely declares his opinion to be adverse to the amendment (*d*). After the amendment has been disposed of, the question itself remains to be put, upon which each Member votes as if no amendment whatever had been proposed. If, however, he be equally opposed to the question and to the amendment, it is quite competent for him to vote with the "noes" on both.

A misunderstanding, however, sometimes arises in the application of this rule. On Tuesday, 9 March 1886, on a motion condemning the continuance of the Church of England in Wales, an amendment was moved to substitute other words, upon which the Government and other Members, being equally opposed to the motion and the amendment, voted that the words proposed to be left out should stand part of the question, intending to vote against the main question when proposed. They accordingly went into the lobby with the supporters of the original motion, who were defeated by a small majority of 12 (ayes 229, noes 241). This was generally represented, in the press, as a near approach to the success of the principle of disestablishment: but when the question, with the amendment added, was put to the vote, it was negatived by a very large majority (ayes 49, noes 346) (*e*).

*Questions mutilated by amendments.*—When a majority of the House disagree both to the original words of a question and to any words proposed to be substituted, the question is sometimes left in a mutilated form, nothing but "That" surviving.

On 19 June 1822, the House, having struck out all the words after "That" of a question relative to tithes in Ireland, an amendment to add other words was superseded by the House passing to the other orders of the day; and the original question was thus left, reduced to the initial word "That" (*f*). On 8 December 1857, a majority of the House, being adverse to a motion relating to joint-stock banks and also to a proposed amendment, the original question was ultimately reduced to the word "That"; when, no other amendment being proposed, the Speaker called upon the Member whose notice stood next upon the paper (*g*). On 21 June 1870, a motion being made "That it is undesirable that opposed business should be proceeded with after twelve o'clock," an amendment was proposed to leave out "twelve" and insert "one." Upon division, the House resolved, first, that "twelve" should not stand part of the question; and secondly, that "one" should not be inserted. The question thus stood with a blank, which no one proposed to fill up with any other words; when the House was relieved from its embarrassment by the withdrawal of the original motion (*h*).

(*d*) Parl. Deb. (1867-68) 191, c. 708.

(*e*) C. J. (1886) 85. See also *ibid.* 106

(*f*) C. J. (1822-23) 356.

(*g*) C. J. (1857-58) 10. See also *ibid.* (1876) 139; *ibid.* (1877) 40; *ibid.* (1880) 60, 74; *ibid.* (1881) 163; *ibid.* (1882) 172; *ibid.* (1883) 10; *ibid.* (1884-85) 71.

(*h*) C. J. (1870) 270. See also *ibid.* (1902) 63, 67, for an amendment which left the Standing Order relating to Order in Debate in a mutilated condition for twenty years.

(3) **Amendment to insert or add words.**—In the case of an amendment to insert or add words the proceeding is more simple. The question is merely put that the proposed words “be there inserted” or “added.” If it be carried, the words are inserted or added accordingly and the main question, so amended, is put; but, if negatived, the question is put as it originally stood (i), unless it be afterwards proposed to insert or add other words.

#### RULES WITH RESPECT TO FORM AND CONTENT OF AMENDMENTS

**Amendments to be relevant.**—The fundamental rule that debate must be relevant to a question (see p. 423) necessarily involves the rule that every amendment must be relevant to the question on which the amendment is proposed (j).

Stated generally, no matter ought to be raised in debate on a question which would be irrelevant, if moved as an amendment, and an amendment cannot be used for importing arguments which would be irrelevant to the main question. Thus, the Speaker has ruled that on the third reading of a bill (a stage on which debate is limited to the contents of the bill) a reasoned amendment should not urge the rejection of the bill on the ground of what it omits (see p. 543). The effect of moving an amendment is, rather, to restrict the field of debate which would otherwise be open on a question. This is not obvious in the case of the type of amendment which proposes to leave out all the words of a question and substitute a different (but of course relevant) proposition. But it is true even in this case. For such an amendment, by concentrating debate on the main question and the amendment as alternative propositions, tends to exclude the consideration of other relevant alternatives.

It would be useless to attempt here a classification of the grounds on which amendments have been held to be irrelevant to a question. Some examples are given in connection with specialized forms of procedure such as bills, particularly in committee (p. 520), votes in supply (pp. 696-7) and business motions (p. 359).

The Speaker has ruled that to a question declaring the expediency of establishing a tribunal for the purpose of inquiring into a definite matter of urgent public importance, which followed the directions of the Tribunals of Inquiry (Evidence) Act, 1921, an amendment to add another subject for inquiry would not be relevant (k), but an amendment relating to the constitution of the tribunal has been allowed (l).

It was not until comparatively recent times that the House would consent to be bound by the obligation of relevancy which it had imposed on its committees.

An illustration may be given of the former licence in amendments. To the question for the Speaker's leaving the chair for the committee on the Reform Bill, 16 August 1831, an amendment was moved for the production

(i) C. J. (1857-58) 201.

(j) Parl. Deb. (1903) 120, c. 806; *ibid.* 121, c. 505; *ibid.* (1905) 144, c. 1497. This principle was asserted for the first time in the 9th edition, p. 325. See also Parl. Deb. (1843) 70, c. 213; *ibid.* (1882) 266, c. 1846; *ibid.* 269, c. 461.

(k) H. C. Deb. (1922) 150, c. 1676.

(l) C. J. (1928) 181.



of papers on the state of Poland ; and on an analogous proceeding, 9 May 1834, the Speaker stated " that, according to the forms of the House and the law of Parliament, there was no necessity that an amendment should be akin to the question " (*m*).

**Amendments to be intelligible.**—Every amendment proposed to be made, either to a question or to a proposed amendment, should be so framed that, if agreed to by the House, the question or amendment, as amended, would be intelligible and consistent with itself.

**Other restrictions on contents of amendments.**—Various considerations that render amendments out of order have been already described (see pp. 375, 395). An amendment is also out of order if it is inconsistent with words in the motion which have been already agreed upon (*n*), or with an amendment already agreed to, or if it is substantially the same as an amendment to the same motion which has already been negatived (*o*). The Speaker has also ruled that an amendment that was merely an expanded negative (*p*), or otherwise irregular in form (*q*), could not be proposed from the chair. He has declined, on the ground of informality revealed during debate, to put the question upon an amendment which had been proposed (*r*).

**Amendment to words before those under consideration out of order.**—Several amendments may be moved to the same question, but subject to the following restrictions: No amendment can be made in the first part of a question, after the latter part has been amended, or has been proposed to be amended, if a question has been proposed from the chair upon such amendment ; but if an amendment to a question be withdrawn, by leave of the House, the fact of that amendment having been proposed will not preclude the proposal of another amendment, affecting an earlier part of the question, so long as it does not extend further back than the last words upon which the House has already expressed an opinion ; for the withdrawal of the first amendment leaves the question in precisely the same condition as if no amendment had been proposed. Each amendment should be proposed in the order in which, if agreed to, it would stand in the amended question (*s*) ; and should a Member be in the act of moving an amendment, another Member, before the question upon such amendment has been proposed from the chair, may intimate his wish to move an amendment to an earlier part of the question, and that wish may be carried out, if the Member, who is in possession of the House, consents to resume his seat (*t*). If the question has been already proposed from the chair upon an amendment, no other

(*m*) C. J. (1830-31) 758 ; *ibid.* (1834) 271 ; Parl. Deb. (1834) 23, c. 785.

(*n*) Parl. Deb. (1884) 284, c. 98 ; *ibid.* (1887) 310, c. 1800 ; *ibid.* 311, c. 965.

(*o*) Parl. Deb. (1893) 18, c. 955.

(*p*) Parl. Deb. (1893-94) 9, c. 456 ; *ibid.* (1905) 146, c. 991 ; *ibid.* (1906) 167, c. 475 ; H. C. Deb. (1938-9) 343, c. 906. For an amendment negating the first part of a motion, see C. J. (1902) 492.

(*q*) C. J. (1881) 26

(*r*) Parl. Deb. (1881) 257, c. 1039 ; C. J. (1922) 196. See also p. 525.

(*s*) 2 Hatsell, 123.

(*t*) Parl. Deb. (1887) 319, c. 1475 ; *ibid.* (1892) 4, c. 1961. When two Members who proposed to move amendments rose almost simultaneously, although his call had been given to the other Member, the Speaker gave priority of speech to the mover of the prior amendment, notice having been given thereof, *ibid.* (1893-94) 14, c. 483.

amendment can be moved, unless the first be by leave of the House, withdrawn.

**Amendment to words ordered to stand part of question out of order.**—When the House has agreed that certain words shall stand part of a question, it is irregular to propose any amendment to those words, as the decision of the House has already been pronounced in their favour; but this rule does not exclude an addition to the words, if proposed at the proper time (*u*).

**Amendment to words added to, or inserted in, question out of order.**—When the House has agreed to add or insert words in a question, its decision may not be disturbed by any amendment of those words; but here again other words may be added. Such words, however, may not be to the same effect as those omitted by the amendment.

**No amendment admissible to certain stock forms of questions.**—To certain forms of motion, which may be called stock forms of procedure, such as the motions made on the various stages of a bill, only certain recognized forms of amendment are permissible (sec p. 498). Thus, on the second reading of a bill, after any words proposed to be left out have been ordered to stand part of the question, an amendment cannot be made, by the addition of words, to the main question. The same rule applies to the question for the Speaker's leaving the chair on going into committee of supply.

On the same principle an amendment to a motion of thanks for a sermon preached before the House has been ruled out of order (*a*).

In like manner an established form of amendment, such as the "six months'" formula used to obtain the rejection of a bill (see p. 498), is not capable of amendment (*b*).

The principle applied to amendments to the questions proposed on the stages of a bill, namely, that established forms of procedure can only be dealt with by recognized forms of amendment, is also applied to motions for adjournment; for just as motions for the adjournment of the House or of the debate (*c*), moved as dilatory motions (see p. 382), cannot be amended, so to a motion that the House at its rising do adjourn till a future day no amendment is permissible unless it relates to the term of the adjournment, but an amendment has been moved to alter the hour of meeting on the day proposed for reassembling (*d*).

When to the question of adjournment from Friday till Monday an amendment was proposed relating to a day of thanksgiving on the restoration of peace, the Speaker ruled the amendment to be out of order, as the only amendment which could be moved was that the House should adjourn to some other day than Monday (*e*).

#### RESERVATION OF AMENDMENTS PARTLY COVERED BY EARLIER AMENDMENTS

When a Member desires to move an amendment to a part of the question proposed to be omitted by another amendment it is sometimes

(*u*) C. J. (1810) 480; *ibid.* (1874) 52; *ibid.* (1883) 191.

(*a*) Parl. Deb. (1897) 50, c. 979.

(*b*) Parl. Deb. (1889) 334, c. 929.

(*c*) A motion for the adjournment of a debate to a day named has been refused by the Speaker, H. C. Deb. (1914) 64, c. 906.

(*d*) C. J. (1914) 132.

(*e*) Parl. Deb. (1846) 141, c. 1541; *ibid.* (1878) 242, c. 2076.

arranged that only so much of the original amendment as is unaffected by the second amendment shall be formally proposed, in the first instance, so as not to preclude the consideration of the second amendment. If the question, that the earlier words proposed to be left out stand part, is negatived, the whole amendment is held to have been agreed to, and the remaining words covered by the amendment are struck out without any further question being put (*f*). This course, which is followed in committees on bills (see p. 520), is resorted to in the House only on the consideration of a bill on report, or of motions of an exceptional character, such as those relating to the business of the House (*g*).

**Special arrangements on taking amendments.**—In order to obtain freedom of discussion and amendment, the rule that no Member may speak twice to the same question, save in committee (see pp. 420-1) has also been relaxed, to enable Members to speak first on the main question and subsequently to move amendments thereto, on the consideration of the rules of procedure (*h*), and of motions for ensuring the completion at a prescribed time of the outstanding stages of a bill or other business (see p. 454) (*i*).

In session 1902 a general discussion of the proposed new rules of procedure was taken on a motion, "That the proposals of the Government on the order paper relating to the procedure of the House be now considered" (*j*). A similar course was followed in session 1919 (*k*). The consideration of a sessional order is not exempted from the ordinary rules of debate (*l*); but in session 1929-30 on a sessional order containing a series of paragraphs laying down a special form of procedure for private bills contributing to the relief of unemployment, a general discussion was allowed without prejudice to the subsequent moving of amendments (*m*).

#### AMENDMENTS TO PROPOSED AMENDMENTS

Another proceeding may also be resorted to, by which an amendment is intercepted, as it were, before it is offered to the House in its original form, by moving to amend the first proposed amendment. In such cases the questions put by the Speaker deal with the first amendment as if it were a distinct question, and with the second as if it were an ordinary amendment. The original question is, indeed, for a time laid aside; and the amendment becomes, as it were, a substantive question itself. Unless this were done, there would be three points under consideration

(*f*) C. J. (1907) 348; Parl. Deb. (1907) 178, c. 1277; C. J. (1924-25) 397, 407, 418; *ibid.* (1929-30) 118.

(*g*) Parl. Deb. (1902) 114, c. 604; *ibid.* (1905) 149, c. 573, 897; H. C. Deb. (1913) 54, c. 815; *ibid.* (1919) 120, c. 672.

(*h*) Parl. Deb. (1880) 250, c. 1450; *ibid.* (1887) 311, c. 204, 207; *ibid.* (1888) 322, c. 1252; *ibid.* (1899) 67, c. 309; *ibid.* (1907) 171, c. 888.

(*i*) Parl. Deb. (1887) 315, c. 1616; *ibid.* (1893-94) 14, c. 366; C. J. (1904) 281; *ibid.* (1905) 293; H. C. Deb. (1921) 144, c. 459, 465, 521, 541, 556. An amendment to limit the duration of speeches on the bill dealt with by the proposed motion has been ruled out of order, H. C. Deb. (1911) 32, c. 849.

(*j*) Parl. Deb. (1902) 102, c. 548.

(*k*) H. C. Deb. (1919) 112, c. 815.

(*l*) Parl. Deb. (1901) 89, c. 1317; *ibid.* 98, c. 1550.

(*m*) H. C. Deb. (1929-30) 233, c. 564.

at once, viz. the question, the proposed amendment and the amendment of that amendment ; but, when the question for adopting the words of an amendment is put forward distinctly and apart from the original question, no confusion arises from moving amendments to it, before its ultimate adoption is proposed.

**Where original amendment is for adding, inserting or leaving out words.**—Where the original amendment is either simply to insert, add, or leave out words, an amendment may at once be proposed to it, without reference to the question itself, which will be dealt with when the amendment has been disposed of. The most difficult form, perhaps, is when the amendment first proposed is to leave out certain words of the original question, and an amendment is proposed to such proposed amendment, by leaving thereout some of the words proposed to be omitted and thus, in effect, restoring them to the original question. In such a case a question is first put, that the words proposed to be omitted stand part of the proposed amendment. If that question be affirmed, the question is then put, that all the words proposed to be omitted by the first amendment stand part of the original question. But if it be negatived, a question is put, that the words comprised in the amendment, so amended, stand part of such original question (*n*).

**Where original amendment is for leaving out words and adding others.**—Where the original amendment is to leave out certain words, in order to insert or add other words, no amendment can be moved to the words proposed to be substituted, until the House has resolved that the words proposed to be left out shall not stand part of the question. But so soon as the question is proposed for inserting or adding the words of the amendment, an amendment may be moved thereto.

A short example will make this latter proceeding more intelligible. To avoid a difficult illustration (of which there are many in the Journals (*o*)) let the simple question be, "That this House, at its rising this day, do adjourn till Tuesday 1st February," to which an amendment has been proposed, to leave out the words "1st February" and add "25th January," and let the question, "that the words '1st February' stand part of the question," be negatived and the question for adding "25th January" be proposed. An amendment may then be proposed to such proposed amendment to leave out "25th" and insert "18th" instead thereof. The question will then be put, "That the word '25th' stand part of the proposed amendment." If that be affirmed, the question for adding "25th January" is put, and, if carried, the main question, so amended, is put, viz. "That this House, at its rising this day, do adjourn till Tuesday 25th January." If it be resolved that "25th" shall not stand part of the proposed amendment, a question is put that "18th" be inserted ; and if that be agreed to, the first amendment, so amended, is put, viz. that the words "18th January" be added to the main question. That being agreed to, the main question, so amended, is put, viz. "That this House, at its rising this day, do adjourn till Tuesday 18th January."

(*n*) C. J. (1754-57) 298 ; *ibid* (1782-84) 842 ; *ibid*. (1809) 131 ; *ibid*. (1878-79) 136.

(*o*) See Journal, General Indexes, tit. *Amendments* ; C. J. (1852-53) 516 ; *ibid*. (1867-68) 160.

Several amendments may be moved, in succession, to a proposed amendment—subject to the same rules as amendments to questions (*p*). An amendment to a proposed amendment cannot be moved, if it proposes to leave out all the words of such proposed amendment; in such a case the first amendment must be negatived before the second can be offered (*q*).

## D. DIVISIONS

A division—that is to say, the separation into two lobbies for the purpose of being counted of the Members who wish to vote for and against a question respectively—is the process adopted by both Houses to decide a question. It is resorted to when, on the question being put at the conclusion of debate, the declaration by the Chair of the result of the collection of the voices (see p. 386) is challenged.

### PROCEDURE ON A DIVISION BEING CALLED IN THE LORDS

The proceedings as at present conducted in the House of Lords (in accordance with S. O. No. XXXII) will now be described.

When, on a question being put, a division is called for, the Lord Speaker, or in a committee of the whole House, the Lord Chairman, directs strangers to withdraw (see p. 407) by saying “Clear the Bar.” As soon as this order has been given, the clerk at the table turns a two-minute sandglass and two tellers are appointed for each party, without (since 1857) respect to their degree. The doors are locked at the expiration of two minutes, as indicated by the sandglass, or after such shorter time as the tellers for both sides may agree to, and the question is again put. The Contents then go into the lobby to the right of the throne, and the Not Contents into the left lobby, where they are counted by the tellers, and their names recorded by the clerks. The vote of the Lord on the woollack, or in the chair, is taken first in the House; and any Lord may, on the ground of infirmity, by permission of the House, be told in his seat. The tellers having counted the Peers voting in the lobbies, and (contrary to the practice of the House of Commons), included themselves in the totals, return to the House and announce the numbers to the Reading Clerk, who records the figures on a paper and hands it to the tellers for the majority; this is given to the Lord on the woollack or in the chair, who reads the result of the division to the House, adding “and so the Contents (or Not Contents) have it.” Any Lords who desire to avoid voting may go within the rails round the throne, where they are not strictly within the House, and are not therefore counted in the division.

**Publication of division lists.**—Alphabetical lists of the names are printed with the Lords’ Minutes; and similar lists, but arranged according to the rank of the peers on the roll, are also inserted in the journals (*r*).

(*p*) C. J. (1840) 153; *ibid.* (1846–47) 865; *ibid.* (1878–79) 136; *ibid.* (1890) 53.

(*q*) Education in rural districts (Mr. Pell and Mr. Wilbraham Egerton), 2 March 1875, C. J. (1875) 70.

(*r*) L. J. (1856–57) 535, 548.

**Correction of vote.**—If a Peer goes into the wrong lobby, he may, pursuant to S. O. No. XXXII, correct the error. Being accompanied by the tellers to the table, he there declares the vote that he intended to give, which is recorded by them accordingly (s).

**Equality of voices in the Lords.**—In case of an equality of voices the Not Contents have it, and the question is declared to have been resolved in the negative. When this occurs, it is always entered in the Journal that, "according to the ancient rule in the law," or "the ancient rule in the like case (t), '*Semper præsuntur pro negante*'" (u).

In view of this rule when the House is sitting judicially, the question is put "for reversing, and not for affirming;" and consequently, if the numbers be equal, the House refuses to reverse the judgment and an order is made that the judgment of the court below be affirmed (a).

**Votes of lay Peers in judicial cases.**—Although all Peers are theoretically entitled to take part in the sittings of the House of Lords for judicial business, the constitution of the Court has in effect been established by the Appellate Jurisdiction Act, 1876, which lays down that an appeal shall not be heard and determined by the House of Lords unless there were present not less than three of the following persons, i.e., the Lord Chancellor, the Lords of Appeal in Ordinary and such Peers as hold or have held certain specified high judicial offices, and it is now established custom that none but these constitute the Court.

In former days, however, the right of all Peers to sit and vote was exercised. In 1685, in the case of Howard *v.* the Duke of Norfolk, a decree of Lord Keeper Guildford was reversed by a House attended by eighteen Bishops and sixty-seven temporal Peers (b). In 1689, on Titus Oates' writ of error, the judgment of the Court below was affirmed, on a division, by thirty-five Peers against twenty-three, in opposition to the unanimous opinion of nine judges who attended (c). Other instances can be found, but in 1844 a strong pronouncement was made by Lord Wharncliffe, in the case of O'Connell and others *v.* the Queen, as to the intervention of lay Peers (d). In Bradlaugh *v.* Clarke, in 1883, Lord Denman attended on the hearing of the appeal and voted with Lord Blackburn, who was in a minority. There is, however, no report in the Law Reports of any speech or remark by him, though other speeches are reported *in extenso*.

#### PROXIES (LORDS)

In the Lords, not only those Peers who are present may vote in a division, but on certain questions absent Peers are entitled, by ancient usage, regulated

(s) L. J. (1862-63) 230; Parl. Deb. (1862) 166, c. 1608; L. J. (1884) 254.

(t) L. J. (1685-91) 167, 168.

(u) For early precedents of this rule and the manner of proposing questions so that there shall be no change except by a majority of voices, see H. L. 95, p. 11 (1907); L. J. (1770-73) 519.

(a) L. J. (1883) 461; *ibid.* (1890-91) 278.

(b) L. J. (1685-91) 50, 3 Cas. in Ch. 14, Campbell, Lives, III. 485, 486.

(c) L. J. (1685-91) 228, Macaulay, Hist. III. 388; see also Sugden 14 *et seq.* for similar instances in cases of Reeve *v.* Long, L. J. (1691-96) 446; Bertie *v.* Falkland, *ibid.* (1696-1701) 230, 236, 240, 247; Ashby *v.* White, *ibid.* (1701-05) 369; Douglas peerage case, *ibid.* (1767-70) 264; 16 Parl. Hist. 518; 1 Cav. Deb. 618; Smith *v.* Lord Pomfret, L. J. (1770-73) 303; 4 Walpole, Mem. of Geo. III. 285; Hill *v.* St. John, L. J. (1774-76) 443; Bishop of London *v.* Fytche, *ibid.* (1779-83) 687; 2 Bro. Parl. Cas. 211; Campbell, Lives, v. 523.

(d) 11 Cl. & Fin. 422.

by several standing orders, to vote by proxy (*e*). In 1867, however, a Lords' committee recommended that the practice of using proxies should be discontinued; and on 31 March 1868, by S. O. No. XXXIV, the House agreed to discontinue the practice of calling for proxies, and resolved that two days' notice must be given of a motion for the suspension of the standing order. No attempt has since been made to suspend this order, and the practice, though capable of being revived on any occasion at the pleasure of the House, may be regarded as in abeyance.

#### PROTESTS (HOUSE OF LORDS)

In addition to the power of expressing assent or dissent by a vote, Peers have the right, without asking leave of the House, to record their opinion and the grounds of it by a "protest," which is entered in the Journals, together with the names of all the Peers who concur in it. Pursuant to S. O. No. XXXV, the entry of a protest in the clerk's book must be made on the next sitting day, before the hour of two o'clock, and must be signed before the rising of the House the same day (*f*), but leave has been given to Lords sometimes to enter a protest against any vote of the House, some time after the period limited by the standing order (*g*). When a protest has been drawn up by any Peer, other Lords may either subscribe it without remark, if they assent to all the reasons assigned in it; or they may signify the particular reasons which have induced them to attach their signatures (*h*): but, by the usage of the House of Lords, the privilege of entering a protest is restricted to those Lords who were present and voted upon the question to which they desire to express their dissent. Leave is sometimes given to Lords to sign the protest of another Peer, although they were not present when the question was put (*i*).

In session 1823, the Duke of Somerset had not voted on the question for the address, but had nevertheless protested against it. His protest, as he had been present at the debate, though he had not voted, was allowed to stand on the journal, Colchester, iii. 273. The protest against the Corn Importation Bill was signed by certain Peers who had not been present, Parl. Deb. (1846) 87, c. 1137; see also *ibid.* (1890) 343, c. 8, 134.

**Expunging of protests or reasons.**—Any protest or reasons, or parts thereof, if considered by the House to be unbecoming or otherwise irregular, may be ordered to be expunged (*j*). Protests or reasons expunged by order of the House have also been followed by a second protest against the expunging of the first protest or reasons, by which the object of the House has been defeated (*k*).

**Withdrawal of protests.**—On 11 April 1690, certain reasons having been expunged, the Duke of Somerset desired that, as he had

(*e*) During the king's illness, in 1811, it was doubtful whether proxies were admissible; see Parl. Deb. (1810-11) 18, c. 976.

(*f*) As to dissents in judicial cases, see Macqueen, 28, 29.

(*g*) L. J. (1868-69) 257, 480; *ibid.* (1890) 216.

(*h*) Protests with reasons date from 1641, Clarendon, book iv. § 254.

(*i*) L. J. (1868-69) 493.

(*j*) L. J. (1696-1701) 655, 757; *ibid.* (1701-05) 55; *ibid.* (1709-14) 220, 480, 481; *ibid.* (1801-2) 82.

(*k*) L. J. (1685-91) 459 (8 and 10 April 1690); Burnet, ii. 41; L. J. (1696-1701) 655; *ibid.* (1709-14) 220; *ibid.* (1722-26) 73.

protested for those very reasons, he might have leave to withdraw his name from the protest, which was granted to him and to any other Lords who pleased (*l*). On 24 June 1824, leave was given to the Peers who had entered a protest against the Earl Marshal's bill to withdraw and amend it as it stated certain facts incorrectly (*m*).

## DIVISIONS IN THE COMMONS

The present method of taking divisions in the House of Commons was introduced experimentally in session 1906, after the Whitsuntide adjournment (*n*), and the amendments in the standing orders necessitated by the change were made at the end of that session (*o*). On a division being called the Speaker or the Chairman, as the case may be, gives the order "clear the lobby," and the tellers' doors in both lobbies are locked. After the lapse of two minutes from this direction the Speaker or Chairman again puts the question, and the ayes and noes respectively declare themselves. If his opinion is again challenged, the Speaker or Chairman directs the ayes to go into the lobby on his right, and the noes into the lobby on his left, and then appoints two tellers for each party; of whom one for the ayes and another for the noes are associated in each lobby, to check each other in the telling.

A Member is bound to act as teller for that party with whom he has declared himself, when appointed by the Speaker; and his refusal would be reported to the House (*p*), though a Member, by seconding a motion, does not pledge himself to act as teller (*q*). A Member cannot act as a teller on a question for his own suspension (*r*).

If two tellers cannot be found for one of the parties, the division cannot take place; and the Speaker forthwith announces the decision of the House. For instance, if it appears that there are no tellers, or but one teller for the ayes, the Speaker declares "that the noes have it" (*s*). When there are two tellers for each party, they proceed at once to their doors leading from the lobbies into the House, which are then unlocked and the counting begins (*t*). Clerks are stationed in each division lobby, at desks, on which are placed lists of the Members, in alphabetical order; and, as the Members pass by, the clerks place a mark against their names; and, at the entrance from the lobby into the House, the tellers count the numbers. Members disabled by infirmity are told in the House. At the expiration of six minutes from the time at which the lobby was

(*l*) L. J. (1685-91) 460.

(*m*) Parl. Deb. (1824) 11, c. 1482.

(*n*) Parl. Deb. (1906) 158, c. 445.

(*o*) C. J. (1906) 494; Parl. Deb. (1906) 167, c. 472.

(*p*) Private Mem. 7 July 1859.

(*q*) Parl. Deb. (1884) 287, c. 1220.

(*r*) Parl. Deb. (1882) 268, c. 1017; *ibid.* (1882) 271, c. 1128; *ibid.* (1901) 98, c. 505.

(*s*) C. J. (1842) 183, 354; *ibid.* (1843) 605; *ibid.* (1877) 61; *ibid.* (1889) 256; *ibid.* (1895) 154; *ibid.* (1896) 130; Parl. Deb. (1896) 39, c. 463; C. J. (1901) 62, 176; *ibid.* (1905) 303; *ibid.* (1917-18) 120; *ibid.* (1922) 113, 138, 157, 189; *ibid.* (1929-30) 121, 196, 281, 393, 405, 430.

(*t*) When on one occasion the door of a division lobby was unlocked without the tellers being present and Members entered the House untold, the Chairman directed the doors to be reopened and a fresh division took place, C. J. (1900) 125. On another occasion, on complaint of division bells not ringing, the question was again put, H. C. Deb. (1937-8) 337, c. 1092. For absence of one teller, see C. J. (1928-9) 83; H. C. Deb. (1928-9) 224, c. 53, 69.



ordered to be cleared, the Speaker or Chairman directs the doors leading from the House into the division lobbies to be locked and they remain locked until the announcement of the numbers from the Chair.

**Declaration of numbers.**—When both parties have returned into the House, the tellers state the numbers in the division to a clerk at the table, to be entered upon the division paper; they then come up to the table (the tellers for the majority being on the right); and one of the tellers for the majority reports the numbers (*u*). The division paper is handed to the Speaker or Chairman, who declares the numbers, and states the determination of the House.

**Divisions in committee.**—In committees of the whole House, divisions were formerly taken by the members of each party crossing over to the opposite side of the House: but the same forms are now observed in all divisions, whether in the House or in committee. A division in committee cannot be taken unless there be two tellers for each side, as in the House itself (*a*).

**Divisions unnecessarily claimed.**—It is in the power of two Members, when a question is put from the Chair, to compel the House to take a division thereupon; and experience proved the necessity of placing this power under some restraint (*b*). By the standing order of 27 November 1882, power was given to the Chair, under certain restrictions, to take the vote of the House upon dilatory motions, such as a motion to adjourn a debate, by calling upon the Members who challenged the decision of the Chair, to rise up in their places. This standing order was repealed during the session of 1888. A standing order passed in that year and amended in 1919—S. O. No. 31—provides that the Speaker or the Chairman, if in his opinion a division is unnecessarily claimed, may take the vote of the House or committee, by calling upon the Members who support, and who challenge his decision, to rise successively in their places; and he, thereupon, as he may think fit, either declares the determination of the House or the committee (*c*), or names tellers for a division (*d*).

#### IRREGULARITIES VITIATING A DIVISION

When an irregularity occurs in a division the usual practice is for the Chair to interrupt the process of division as soon as the irregularity is

(*u*) The report of three tellers has been accepted on occasions when one teller was absent, *Parl. Deb.* (1895) 36, c. 877, 1059; *H. C. Deb.* (1912-13) 47, c. 91; but it is the duty of the tellers to remain in the House until the numbers have been declared, *Parl. Deb.* (1895) 36, c. 1060; *H. C. Deb.* (1912-13) 47, c. 245.

(*a*) *C. J.* (1847-48) 622; *ibid.* (1850) 364; *ibid.* (1872) 121, 284, 347; *ibid.* (1911) 70, 110, 427; *ibid.* (1914-16) 119; *ibid.* (1917-18) 201.

(*b*) See the author's pamphlet on Public Business in Parliament, 1849, 2nd edition, p. 29, and the Report of the Committee on Public Business, *H. C.* 268 (1878).

(*c*) *C. J.* (1920) 55; *H. C. Deb.* (1920) 126, c. 1463; *C. J.* (1923) 127, 288, 300, 305; *ibid.* (1927) 135, 206, 255.

(*d*) *C. J.* (1897) 299; *ibid.* (1918) 56. From 1888 till 1919 the power of the Chair was restricted to divisions "frivolously or vexatiously" claimed. In the latter year the provision which required that in cases in which there was not a division, the number of Members who had risen should be declared from the Chair and their names be taken down in the House and printed with the division lists, *C. J.* (1890) 580; *ibid.* (1890-91) 476; *ibid.* (1892) 102, etc., was repealed, *ibid.* (1919) 35. The record of names so taken down was not numbered in the list, as if it were a division, *Parl. Deb.* (1897) 48, c. 1248; *ibid.* (1904) 135, c. 721. Neither names nor numbers are now announced, though the numbers of the minority appear in the Journal. See *H. C. Deb.* (1936-7) 326, c. 2814.

discovered, put the question again and proceed to take a division *de novo* (e).

**Failure of Teller to attend in Lobby.**—On 22 January 1929, tellers were appointed for a division in Committee on the Local Government Bill. As it appeared to the Chairman that there was delay in completing the division, he asked the tellers to come to the Table. One of the tellers then stated that a teller for the noes had not appeared at the door of the "No" lobby, and that therefore the doors had not been opened. The Chairman ruled that in these circumstances the question must again be put from the chair, C. J. (1928-29) 83; H. C. Deb. (1929) 224, c. 69.

**Member tells though not nominated.**—On 9 March 1932, when the House was in Committee, the tellers had come to the table following a division, when it was stated by one of them that a Member who had not been nominated had told during part of the division. The Chairman ruled that the division must be regarded as void, and that the question must again be put, H. C. Deb. (1932) 262, c. 1840. See also C. J. (1924-25) 434; H. C. Deb. (1925) 188, c. 2641; C. J. (1924-25) 95; H. C. Deb. (1925) 181, c. 397.

**Disagreement between tellers.**—If two tellers differ as to the numbers on the side told by them, or if a mistake regarding the numbers be discovered, unless the tellers agree thereon, a second division must take place, when the numbers will be correctly reported by the Chair.

Second divisions were taken on 30 March 1810, on the Expedition to the Scheldt, C. J. (1810) 235; on 26 June 1860, in committee on the Tenure and Improvement of Land (Ireland) Bill, *ibid.* (1860) 332; and on 13 April 1872, in committee on the Parliamentary and Municipal Elections Bill, *ibid.* (1872) 140. On 26 June 1860, a question was raised privately, whether a Member, who had voted with the ayes in the first division, could afterwards vote with the noes: but it was held that, as the first division had become null and void, the House could only deal with the Member's voice and vote in the last and valid division.

#### ERRORS IN A DIVISION

If a mistake is subsequently discovered, it will be ordered to be corrected in the Journal (f). Where an error in the numbers has been discovered before the end of a sitting, the tellers being agreed thereon have come to the table and stated the corrected numbers and the Speaker has reported the numbers accordingly (g). When an error in the numbers reported by the tellers in a committee of the whole House has been discovered before the Chairman has left the chair, the Chairman has ordered the numbers to be corrected accordingly (h). An error in the report of the numbers taken at a division is brought before the House by both the tellers of the lobby wherein the error arose; though a statement made by one of the tellers has been accepted.

(e) C. J. (1926) 116-117; H. C. Deb. (1937-8) 337, c. 1092-3.

(f) C. J. (1847) 131; *ibid.* (1860) 216; *ibid.* (1863) 111; *ibid.* (1882) 98; *ibid.* (1886) 57, 103; *ibid.* (1887) 506; *ibid.* (1893-94) 496; *ibid.* (1896) 187; *ibid.* (1897) 221; *ibid.* (1899) 146, 349; *ibid.* (1901) 240; *ibid.* (1908) 49; *ibid.* (1929-30) 448; proceedings declared null and void as result of error by tellers, *ibid.* (1938-9) 95, 96.

(g) C. J. (1847-48) 102.

(h) C. J. (1867-68) 16; *ibid.* (1873) 223.

**Addition of Members uncounted by tellers.**—When Members have complained immediately after the declaration of the numbers in a division from the chair that the tellers had left the door of a lobby before they had reached it, the Speaker or the Chairman has directed the tellers of that lobby to come to the table, and having heard their explanation, directed the clerk to alter the numbers by adding the names of the Members and then again declared the numbers as so corrected (*i*). Both the tellers in the lobby through which the Member has passed must agree that he should be counted (*j*).

**Members voting in the wrong lobby.**—If a Member goes into the wrong lobby, through inadvertence, it is the rule in the Commons, in opposition to the practice of the Lords (see p. 401), to hold the Member bound by the vote he has actually given.

On 21 June 1864, Sir Colman O'Loughlen, in committee on the Court of Chancery (Ireland) Bill, went into the wrong lobby, and carried, by his vote, the question that the chairman do leave the chair. He stated his case to the Speaker, when the House was resumed, but was told that, having heard the question put, there was no remedy for his error (*k*). On 11 November 1912, it was stated that three Members had inadvertently voted in the wrong lobby on an amendment on 1 November. The Speaker, who was asked whether the division list could be rectified, said that under the old system a Member who said that he had not heard the question put could ask to have the question put again to him and could then give his vote, but that under the system introduced in 1906 it was not necessary to hear the question put and that therefore the votes given on 1 November could not be rectified, and added that there was no means of correcting a vote inadvertently given wrongly, even if an immediate appeal were made to the chair (*l*).

**Members voting in both lobbies.**—Members who have voted in both lobbies in the same division have been allowed on the following day to state as a matter of personal explanation (see p. 353) in which lobby they intended to vote, and the numbers of the division have been directed to be corrected accordingly (*m*). A correction has been directed to be made at the end of government business on the same day after an explanation by a member of the Government on his own and a colleague's behalf (*n*).

**Time and manner of dealing with errors in a division.**—As has been mentioned (see p. 387), the objection that a Member's vote in a division was contrary to the way in which he had given his voice in the House must be taken before the declaration of the numbers of the division from the chair (*o*); and this rule is enforced regarding a demand to

(*i*) C. J. (1895) 186; Parl. Deb. (1895) 33, c. 658; C. J. (1912-13) 424; H. C. Deb. (1912) 44, c. 1151; C. J. (1912-13) 457; H. C. Deb. (1912) 45, c. 939; C. J. (1920) 493; H. C. Deb. (1920) 136, c. 1043.

(*j*) Parl. Deb. (1901) 98, c. 1189. See also Parl. Deb. (1899) 67, c. 1200.

(*k*) Parl. Deb. (1864) 176, c. 31. For similar cases, see C. J. (1856) 129; *ibid.* (1860) 229; *ibid.* (1864-65) 359; *ibid.* (1866) 136; *ibid.* (1882) 172; Parl. Deb. (1861) 164, c. 210.

(*l*) H. C. Deb. (1912) 43, c. 1716. See also *ibid.* (1918) 105, c. 2031; *ibid.* (1919) 122, c. 1327; *ibid.* (1932-3) 188, c. 2239.

(*m*) C. J. (1906) 257; Parl. Deb. (1906) 159, c. 58.

(*n*) C. J. (1917-18) 233; H. C. Deb. (1917) 98, c. 2116.

(*o*) H. C. Deb. (1936-7) 326, c. 2811.

record his vote made by a Member who, having gone into a division lobby, has not been counted by the tellers (see p. 406).

#### WITHDRAWAL OF STRANGERS

It was formerly customary, before a division took place in either House, to enforce the entire exclusion of strangers. In the House of Lords, under resolution 10 March 1857, and S. O. No. XXXII, strangers have not been required to withdraw from the galleries and the space within the rails of the throne. In fact, they withdraw only from those parts of the House in which, if they remained, they would interfere with the division. In the House of Commons, pursuant to the resolution of 28 July 1853, and the standing order of 19 July 1854, which was repealed in 1906, strangers were required to withdraw only from below the bar (*p*), but since 1906 strangers in all the galleries have been allowed to remain during a division, the doors leading to the seats under the gallery and the seats reserved for officials being locked from the time when the lobby is ordered to be cleared until the declaration of the numbers from the Chair.

#### VOTING WITHOUT HEARING QUESTION PUT

**Peers not to vote without hearing question put.**—In the House of Lords, any Peer who desires to vote must be present in the House when the question is put from the chair the first or second time. In 1865, after the vote of a Peer had been disallowed because he had not been in the House when the question was put (*q*), the present arrangement was introduced by which the question is again put from the chair after the doors have been locked (see p. 400) (*r*).

**Practice in the House of Commons.**—A similar rule formerly obtained in the House of Commons, but in session 1906, in connection with the changes made in taking divisions which have been already mentioned (see p. 403), the House agreed to a new standing order—now S. O. No. 30—which provided that a Member might vote in a division although he had not heard the question put (*s*), and that a Member was not obliged to vote although he was in the House when the question was put.

#### PAIRS

A practice, similar in effect to that of voting by proxy, has for many years been resorted to in both Houses. A system known by the name of "pairs," enables a Member to absent himself, and to agree with another Member that he also shall be absent at the same time. By this mutual

(*p*) On 16 June 1857 a Peer remained in one of the division lobbies until after the doors had been locked; and the Serjeant was directed to let him out, without making any report to the House; see also Colchester, i. 519.

(*q*) L. J. (1833) 481; *ibid.* (1865) 307; Parl. Deb. (1865) 179, c. 739. Such an objection could be taken either immediately or subsequently during the sitting, when the division took place, or at another sitting of the House.

(*r*) L. J. (1865) 396.

(*s*) Accordingly a Member who has not heard the question put the first or second time can no longer claim to have the question again stated to him, H. C. Deb. (1912) 40, c. 1274, 1338.

agreement, a vote is neutralized on each side of a question, and the relative numbers in the division are precisely the same as if both Members were present. The division of the House into distinct political parties facilitates this arrangement, and Members pair with each other, not only upon particular questions, or for one sitting of the House, but for several weeks or even months at a time. There can be no parliamentary recognition of this practice, although it has never been expressly condemned (*t*); and it is therefore conducted privately by individual Members, or arranged by the Whips of the respective parties.

On an occasion when the House of Commons, having met on Monday, sat until half-past one o'clock on Tuesday afternoon, Members who paired on Monday for "the night" voted in divisions which took place after nine o'clock on Tuesday morning, because, as they had not paired for "the sitting," but for "the night," it was held that the compact terminated on Tuesday morning. Doubts having arisen regarding this course of action, a memorandum was drawn up by the "Whips" for the Government and for the Opposition, for their guidance, if a similar occasion arose.

#### CASTING VOTE OF THE SPEAKER

If the numbers in a division are equal, the Speaker, who otherwise does not vote, must give the casting vote (*u*). In the performance of this duty, he is at liberty to vote like any other Member, according to his conscience, without assigning a reason (*a*); but, in order to avoid the least imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the House final, and to explain his reasons, which are entered on the Journal (*b*).

**Principle on which Speaker gives casting vote.**—The principle which guides a Speaker in giving his casting vote was thus explained by Mr. Speaker Addington. On 12 May 1796, on the third reading of the Succession Duty on Real Estates Bill, there having been a majority against "now" reading the bill the third time, and also against reading it that day three months, there was an equality of votes on a third question, that the bill be read the third time to-morrow, when the Speaker gave his casting vote with the ayes, saying "that upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself—for instance, that a bill do or do not pass—he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded" (*c*).

(*t*) A motion condemning this practice, 6 March 1743, was negatived, on division C. J. (1741-45) 602.

(*u*) A casting vote was not given when, on correction of an error reported by the tellers on a day subsequent to that on which the division took place, the numbers were found to be equal, but the proceedings subsequent to the division were declared null and void, C. J. (1938-9) 95, 96.

(*a*) C. J. (1837-38) 587.

(*b*) C. J. (1837-38) 631; *ibid.* (1840) 536; *ibid.* (1843) 163; *ibid.* (1847) 872; *ibid.* (1851-52) 205; *ibid.* (1887) 397; *Parl. Deb.* (1887) 317, c. 2015; C. J. (1897) 219; *ibid.* (1905) 105.

(*c*) Colchester, i. 57, C. J. (1795-96) 764.

Similarly, the voices being equal on 24 February 1797, on the question for going into committee on the Quakers Bill, Mr. Speaker Addington gave his vote with the ayes (d).

*Casting vote submitting a matter to the further decision of the House.*—The course adopted by successive Speakers, in giving their casting vote, can be traced in the following examples, beginning with cases of the casting vote given so as to avoid the responsibility of deciding a matter and to afford the House an opportunity for a further decision.

In the proceedings taken against Lord Melville, 8 April 1805, which resulted in his impeachment, the numbers were equal upon the *previous* question (moved in the form "That the question be now put")—that question being the motion on which Lord Melville's impeachment was based. Mr. Speaker Abbot gave his casting vote in favour of the previous question, on the ground that "the original question was now fit to be submitted to the judgment of the House." (e).

On 10 May 1860, the numbers being equal upon an amendment proposed to a bill, on report, Mr. Speaker Denison stated that as the House was unable to form a judgment upon the propriety of the proposed amendment, he should best perform his duty by leaving the bill in the form in which the committee had reported it to the House, and accordingly gave his vote against the amendment (f). A similar course has generally been taken on stages in the progress of bills—often without stating any reasons (g).

Upon the division on the third reading of the Tests Abolition (Oxford) Bill, 1 July 1864, the numbers were equal. Under these circumstances, Mr. Speaker Denison said that he would afford the House another opportunity of deciding upon the merits of the bill, by declaring himself with the ayes, and the question that the bill do pass was negatived by a majority of two (h).

On 3 April 1905, the numbers being equal upon an instruction to the committee on the London County Council (Tramways) Bill to omit certain tramways, Mr. Speaker Gully stated that in order that the matter might be considered by the committee and that the House might have a further opportunity of coming to a more decisive conclusion he gave his voice with the noes (i).

On 12 April 1938, the numbers being equal upon the question of leave to bring in a bill to extend Palestinian nationality under S. O. No. 10, Mr. Speaker Fitz Roy stated that he thought he ought to vote for the introduction of the bill so that the House could deal with it as the House thought fit (j).

*Casting vote which decided a matter before the House.*—In the following cases the casting vote decided the matter before the House, and was given upon the judgment which the Speaker formed upon the occasion which required his vote.

On a question for the appointment of a committee to inquire into delays in the Court of Chancery, 5 June 1811, Mr. Speaker Abbot voted with the

(d) Sidmouth, i. 187, Colchester, i. 85, C. J. (1796-97) 335.

(e) C. J. (1805-06) 201, Colchester, i. 548.

(f) C. J. (1860) 235.

(g) C. J. (1821-22) 439; *ibid.* (1828) 292; *ibid.* (1837) 496; *ibid.* (1837-38) 587; *ibid.* (1840) 536; *ibid.* (1841) 344; *ibid.* (1843) 163; *ibid.* (1847) 872; *ibid.* (1851-52) 205.

(h) C. J. (1864-65) 388; Denison, 167.

(i) C. J. (1905) 105.

(j) H. C. Deb. (1937-38) 334, c. 947.

ayes, it being upon a question "whether or not this House shall exercise its own power of inquiry into the causes of existing grievances" (*k*).

On 26 May 1826, Mr. Speaker Manners-Sutton, the numbers being equal, voted in favour of a resolution regarding the practice of the House in cases of bribery at elections, because the resolution was merely declaratory of what are the powers, and what is the duty of the House (*l*).

On a motion for an address to the Crown in behalf of political offenders, 25 May 1841, Mr. Speaker Shaw-Lefevre declared himself with the noes, as "the vote, if carried, would interfere with the prerogative of the Crown" (*m*).

On a question for referring a petition, complaining of bribery at Bridport, to a committee of inquiry, 19 May 1846, the numbers being equal, Mr. Speaker Shaw-Lefevre declared himself with the noes, because the House had no better means of forming a judgment upon the question than a committee, who had declined to entertain it, and it was open to an elector of the borough, under the provisions of the Act 5 & 6 Vict. c. 2, to present another petition to the House (*n*).

On 24 July 1862, the numbers being equal on a question for disagreeing to a Lords' amendment, Mr. Speaker Denison said he should support the bill, as passed by the House of Commons (*o*).

The numbers being equal on the third reading of the Church Rates Abolition Bill, 19 June 1861, Mr. Speaker Denison gave his casting vote against the bill, stating that it appeared to him that a prevailing opinion existed in favour of a settlement of the question, different, in some degree, from that contained in the bill; and that he thought he should best discharge his duty by leaving to the future judgment of the House to decide what change in the law should be made, rather than to take the responsibility of the change on his single vote (*p*).

The numbers being equal upon a proposed resolution relative to Trinity College, Dublin, 24 July 1867, Mr. Speaker Denison stated "that this was an abstract resolution, which, if agreed to by the House, would not even form the basis of legislation; but undoubtedly the principle involved in it was one of great importance, and, if affirmed by a majority of the House, it would have much force. It should, however, be affirmed by a majority of the House, and not merely by the casting vote of its presiding officer. For these reasons he declared himself with the noes" (*q*).

The numbers being equal on an amendment proposed to be inserted in the Regency Bill, on consideration as amended, on 24 July 1910, the effect of which was to replace words which had been in the bill as introduced but had been left out in committee, the Speaker stated that he thought that he ought to vote for the bill in the form in which it was originally introduced into the House, and accordingly he gave his voice with the ayes (*r*).

#### CASTING VOTE OF CHAIRMAN IN COMMITTEE OF WHOLE HOUSE

When the voices are equal in a committee of the whole House the Chairman, who does not otherwise vote, gives his casting vote, and in

(*k*) C. J. (1810-11) 395, Colchester, II. 334.

(*l*) C. J. (1826) 387.

(*m*) C. J. (1841) 344.

(*n*) C. J. (1846-47) 731.

(*o*) C. J. (1862) 365; Parl. Deb. (1862) 168, c. 785, Denison, 124.

(*p*) C. J. (1861) 282, Denison, 94. See also Speaker's vote "no" on second reading of a bill 3 April 1821, C. J. (1821-22) 229.

(*q*) C. J. (1867) 395. On two occasions the Speaker has voted for the postponement, of a proceeding to a future day, *ibid.* (1878) 423; *ibid.* (1887) 397.

(*r*) C. J. (1910) 265; H. C. Deb. (1910) 19, c. 1717.

doing so is guided by the same principles as the Speaker in the House (s). Thus, the numbers being equal in Committee of Supply, upon the reduction of a vote, the Chairman declared himself with the noes, as the committee would have an opportunity of voting upon any other reduction of the proposed vote (t), and in committee on a bill on an amendment to leave out words the Chairman has given his casting vote for their retention in the bill, as the House would have another opportunity of considering the same question on consideration of the bill as amended (u).

#### SPEAKER VOTING IN COMMITTEE

Although the Speaker is restrained by usage while he is in the chair in the exercise of his independent judgment, he is entitled in a committee of the whole House to speak and vote like any other Member. Of late years, however, he has generally abstained from the exercise of this right. The latest recorded example is that of Mr. Speaker Denison in committee on the Customs and Inland Revenue Bill, 1870 (a).

#### PUBLICATION OF DIVISION LISTS

After the division, the division lists are examined by the clerks and sent off to the printer, who prints the marked names in their alphabetical order; and the division lists are delivered on the following morning with the "Votes and Proceedings" of the House (b). If an error occurs in marking the name of a Member upon the division list, the error is corrected, upon application made at the table of the House or to the Public Bill Office, by a memorandum published at the earliest opportunity at the end of a subsequent division list.

#### CANVASS FOR VOTES BY A MEMBER

The distribution among Members of a circular addressed to them by another Member, asking for their vote in favour of a motion which the Member intended to move, or to state whether their vote would be for or against the motion, was condemned by the Speaker, as a proceeding "contrary to the best usages and traditions of the House, and which would detract from its character" (c).

#### PERSONAL PECUNIARY INTEREST

In both Houses personal interest affects the right of Members to vote in certain cases. In 1796, a general resolution was proposed in the Lords, "That no Peers shall vote who are interested in a question:" but it was not adopted (d). It is presumed, however, that such a resolution was deemed unnecessary; and that it was held that the personal honour of a Peer will prevent him from forwarding his own pecuniary interest

(s) For cases in which the chairman has given his casting vote without assigning a reason, see C. J. (1834) 430; *ibid.* (1847-48) 661; *ibid.* (1859) 333; *ibid.* (1860) 256.

(t) C. J. (1868-69) 371; Parl. Deb. (1868-69) 198, c. 950.

(u) C. J. (1876) 398; Parl. Deb. (1876) 231, c. 772.

(a) Parl. Deb. (1870) 201, c. 1815; Denison 257.

(b) The issue of the printed lists of the divisions began on Monday, 22 February 1836.

(c) Parl. Deb. (1888) 323, c. 1439.

(d) L. J. (1794-96) 640, 650.



by his votes in Parliament. By S. O. (Private Bills) 98, Lords are "exempted from serving on the committee on any private bill wherein they shall have any interest."

In the Commons it is a rule that no Member who has a direct pecuniary interest in a question shall be allowed to vote upon it: but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character. On 17 July 1811, the rule was thus explained by Mr. Speaker Abbot: "This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy" (e). This opinion was given upon a motion for disallowing the votes of the bank directors upon the Gold Coin Bill, which was afterwards negatived without a division.

**Objections overruled by the Chair.**—On occasions when the objection of personal interest in a vote has been raised, which came obviously within the exemption from the application of the rule, defined by Mr. Speaker Abbot, the Speaker or the Chairman has overruled the objection, or has decided that a motion to disallow the vote would be out of order.

The following examples of Speaker's rulings to this effect may be given: Parl. Deb. (1872) 212, c. 1136 (see p. 414); *ibid.* (1884) 287, c. 875 (member of a corporation, petitioners against a bill, moving an instruction for the protection of that corporation); *ibid.* (1889) 334, c. 732 (minister voting against reduction of his official salary); *ibid.* (1898) 61, c. 826 (owners of land in Ireland on clause providing for payment out of public money of landlord's share of rates, Local Government (Ireland) Bill); H. C. Deb. (1917) 92, c. 2429 (Members who were landowners or farmers, Corn Production Bill). Chairman's rulings: Parl. Deb. (1871) 206, c. 1742 (votes of officers on full pay in committee on Army Regulation Bill on clause giving compensation to officers holding saleable commissions); *ibid.* (1890) 345, c. 1232; *ibid.* (1904) 137, c. 910, 1305 (votes of Members interested in licensed property on proposals for giving compensation for extinction of licences); *ibid.* (1906) 156, c. 505 (votes of Members who were solicitors on amendment to clause of Justices of the Peace (No. 2) Bill making solicitors eligible to the commission of the peace); H. C. Deb. (1911) 29, c. 1679 (voting of salaries of Members); *ibid.* (1912-13) 48, c. 609, 745 (vote of Member, professionally retained by a private client in an inquiry, on the vote in Committee of Supply which included a provision for the cost of the inquiry); *ibid.* (1926) 197, c. 554.

#### **Personal interest in votes on questions of public policy.**—

The only instance to be found in the Journals in which the vote of a Member has been disallowed upon a question of public policy is the case of the votes of three Members given in session 1892 in favour of the grant in aid of a preliminary survey for a railway from the coast to Lake Victoria Nyanza, which had been undertaken on behalf of the Government by the British East Africa Company, of which two of the Members in question were directors and shareholders and the third was a shareholder (f).

(e) Parl. Deb. (1811) 20, c. 1001-1012. See also H. C. Deb. (1932) 261, c. 192.

(f) C. J. (1892) 98. See also Report of Select Committee on Members of Parliament Personal Interest, H. C. 274 (1896).

On 1 June 1797, however, Mr. Manning submitted to the Speaker whether he might vote, consistently with the rules of the House, upon the proposition of Mr. Pitt for granting compensation to the subscribers to the Loyalty Loan, he being himself a subscriber. The Speaker explained generally the rule of the House and Mr. Manning declined to vote (*g*). After the division, the votes of two other Members were objected to as being subscribers: but one stated that he had parted with his subscription, and the other that he had determined not to derive any advantage to himself; upon which questions for disallowing their votes were severally negatived (*h*). On 3 June 1824, a division took place on a "Bill for repealing so much of an Act 6 Geo. I as restrains any other corporations than those in the Act named, and any societies or partnerships, from effecting marine insurances, and lending money on bottomry." An entry in the Journal in the form of a memorandum states that an objection was made to the numbers declared by the tellers, that certain Members who voted with the ayes were personally interested in the passing of the bill, as being concerned in the Alliance Insurance Company; but it was decided that they were not so interested as to preclude their voting for the repeal of a public act (*i*). On 10 July 1844, on the question for hearing counsel against a bill for suspending certain actions for penalties under the gaming laws, objections were taken to the votes of Members who were defendants, but one stated that it was not his intention to take advantage of the provisions of the bill and plead the same in bar of such action, and the other that he had not been served with any process. Motions for disallowing their votes were, therefore, withdrawn (*j*). On 11 July 1844, the vote of a Member upon the second reading of a public bill relating to railways was objected to upon the ground that he had a direct pecuniary interest as the proprietor of railroad shares, but a motion for disallowing his vote was withdrawn (*k*).

**Personal interest in votes on private bills.**—The votes of Members, who were subscribers to undertakings proposed to be sanctioned by a private bill (*l*), or who were otherwise interested in a private bill, have frequently been disallowed.

In 1800, the votes of three Members were disallowed, as having a direct interest in a bill for incorporating a company for the manufacture of flour, wheat and bread (*m*). On 20 May 1825, notice was taken that a Member, who had voted with the ayes on the report of the Leith Docks Bill, had a direct pecuniary interest in passing the bill: he was heard in his place and stated that on that account he had not voted in the committee on the bill, and that he had voted, in this instance, through inadvertence. His vote was ordered to be disallowed (*n*). Motions to disallow the votes of shareholders in the company which was promoting the bill on which the division was taken, have been negatived (*o*). On the second reading of the Birmingham and Gloucester Railway Bill, 15 May 1845, objection was taken to one of the tellers for the noes, as being a landholder whose property would be injured by the proposed line; while on the second reading of the London

(*g*) *Parl. Hist.* (1797-78) 33, c. 791. For recent general ruling, see *H. C. Deb.* (1932) 261, c. 192; *ibid.* (1936-7) 323, c. 363.

(*h*) *C. J.* (1796-97) 632.

(*i*) *C. J.* (1824-25) 455.

(*j*) *C. J.* (1844) 486.

(*k*) *C. J.* (1844) 491.

(*l*) *C. J.* (1825-26) 110; *ibid.* (1836) 271.

(*m*) *Parl. Hist.* (1800-01) 35, c. 463, Perceval, i. 76.

(*n*) *C. J.* (1825-26) 443; see also *ibid.* (1825-26) 110; *ibid.* (1836) 271.

(*o*) *C. J.* (1883) 189; *ibid.* (1884) 103.

and North Western Railway Bill, 14 April 1896, objection was taken to the vote of a Member on the ground that he was a director of the company. In both cases the motion for disallowing the vote was withdrawn (*p*). On 15 July 1872, objection was taken to two of the tellers in a division, which had been taken against the Birmingham Sewerage Bill, on the ground of personal pecuniary interest: but the Speaker stated that they had no such pecuniary interest in the bill as would disqualify them from voting against it (*q*).

**Personal interest in votes on competing bills.**—The extent to which the rule of personal interest in a vote given by a Member against a private bill, which would create a project intended to compete with an undertaking in which he has a pecuniary interest, is as yet undecided. As the Speaker stated, on 12 May 1885, there is no rule of the House on the subject. He recommended that each Member should be guided by his own feelings in the matter and should vote, or abstain from voting, as he thought fit; though he added that Members should be aware that they ran the risk of having their votes disallowed by the subsequent action of the House (*r*).

On 22 February 1825, a Member voted against a bill for establishing the London and Westminster Oil Gas Company and notice was taken that he was a proprietor in the Imperial Gas Light and Coke Company, and thereby had a pecuniary interest in opposing the bill. A motion was made that his vote be disallowed: but, after he had been heard in his place, it was withdrawn (*s*). On 16 June 1846, objection was taken to the vote of a Member who had voted with the noes, because, as director and shareholder in the Caledonian Railway Company, he had a direct pecuniary interest in the rejection of the Glasgow, Dumfries and Carlisle Railway Bill. Whereupon he stated that the sole direct interest that he had in the Caledonian Railway was as holder of twenty shares to qualify him to be a director in that undertaking; and that he voted against the bill, conceiving the proposed railway to be in direct competition with the Caledonian Railway, as decided by the legislature in the last session. A question for disallowing his vote on the ground of direct pecuniary interest was negatived (*t*). On 9 March 1886, objection was taken to the votes of two Members given in favour of committing the Manchester Ship Canal Bill to a select committee on the ground that, as directors of the London and North Western Railway Company, the receipts and dividends of which might be affected by the construction of the canal, they were pecuniarily interested in the matter. The motion for disallowing their votes was negatived (*u*).

**Time and manner for making motions to disallow votes.**—An objection to a vote, on the ground of personal interest, cannot be raised except upon a substantive motion (which must be made as soon as the division is completed) (*a*), that the vote given in a division be disallowed, and cannot be brought forward as a point of order (see

(*p*) C. J. (1845) 436; *ibid* (1896) 143.

(*q*) Parl. Deb. (1872) 212, c. 1136.

(*r*) Parl. Deb. (1884-85) 298, c. 342.

(*s*) C. J. (1825-26) 110.

(*t*) C. J. (1846-47) 873

(*u*) C. J. (1886) 83.

(*a*) H. C. Deb. (1912-3) 48, c. 747; *ibid* (1926) 191, c. 1937.

p. 375) (b). An objection on the same ground against a vote given in committee of the whole House must be determined by the committee upon a motion made therein, that the vote be disallowed (c), and a motion to report progress, in order to bring such an objection before the House, has not been permitted (d).

Owing to the interruption of business at ten minutes to seven o'clock, a motion that certain votes given in the Committee of Supply, on 4 March 1892, be disallowed, was made in the committee on 11 March, C. J. (1892) 98. On 14 August 1911, being the last allotted day for Committee of Supply, objection was taken to a Member's vote after ten o'clock notwithstanding the Standing Order, and the Chairman ruled upon the objection, H. C. Deb. (1911) 29, c. 1679.

The Member whose vote is under consideration on the ground of personal interest, having been heard in his place, should withdraw immediately, and before the question founded thereon has been proposed (e).

**Personal interest in votes in private bill committees.**—The principle of the rule which disqualifies an interested Member from voting must always have been intended to apply as well to committees as to the House itself: but it is undeniable that a contrary practice had very generally obtained in committees upon private bills, although it was not brought directly under the notice of the House until 21 June 1844, when the Middle Level Drainage Bill Committee instructed their chairman to report that a Member "had received an intimation that he ought not to vote on questions arising thereon, by reason of his interest in the said bill;" and desired the decision of the House upon the following question: "Whether a Member, having property within the limits of an improvement bill, which property may be affected by the passing of the bill, has such an interest as disqualifies him from voting thereon." The reply the House made to the application from the committee was an instruction thereto, "That the rule of this House relating to the vote, upon any question in the House, of a Member having an interest in the matter upon which the vote is given, applies likewise to any vote of a Member so interested, in a committee (f). Since that time, committees on opposed private bills are constituted so as to exclude Members locally or personally interested; and in committees on unopposed bills, such Members are not entitled to vote (see pp. 912, 923). A member of a committee on an opposed private bill, or group of bills, will be discharged from further attendance, if it be discovered, after his appointment, that he has a direct pecuniary interest in the bills, or one of them (g) (see also p. 913).

(b) Parl. Deb. (1884) 285, c. 1222; *ibid.* (1892) 2, c. 90; H. C. Deb. (1912-13) 48, c. 607. A motion for a committee to inquire into the legality of votes given in a division has also been held to be out of order, Parl. Deb. (1901) 92, c. 419.

(c) H. C. Deb. (1912-13) 48, c. 607, 609, 745-747.

(d) Parl. Deb. (1890) 345, c. 1232-1235.

(e) C. J. (1825-26) 110; *ibid.* (1836) 271; *ibid.* (1883) 189; *ibid.* (1886) 83.

(f) Parl. Deb. (1844) 76, c. 16.

(g) Special Report from Committee on Group A of Private Bills relative to Kent Electric Power Bill, 28 May 1941. Recent practice has established that the holding, by a member of the Committee, of some debenture or ordinary stock in a railway company petitioning against a private bill, does not constitute a direct pecuniary interest.

**Member interested may propose motion or amendment.**—Although a Member interested is disqualified from voting, he is not restrained, by any existing rule of the House, from proposing a motion or amendment.

On 26 July 1859, Mr. Whalley moved an amendment to a clause added by the Lords to a railway bill, in which he admitted that he was personally interested. In the debate, exception was taken to such an amendment having been proposed by a Member having a pecuniary interest: but the Speaker ruled that, though it was a well-known rule of the House that a Member under such circumstances could not be permitted to vote, and though the course adopted was certainly most unusual, yet there was no rule by which the right of a Member to make a motion was restrained, and he had been given to understand that Mr. Whalley did not intend to vote (*h*). On 15 June 1904, Mr. Kerr formally moved the committal to a joint committee of the Leith Corporation Tramways Order Confirmation Bill without objection being taken to his action, although his personal interest in the bill was stated to the House. He did not vote in the subsequent division (*i*). Objections that a Member alleged to be personally interested could not give notice of opposition to a bill, and that a Member, who moved an instruction to a committee on a private bill, was a member of a corporation which petitioned against the bill, were overruled by the Speaker (*j*).

**Personal interest other than pecuniary.**—Disallowance of a vote on the score of personal interest is restricted to cases of pecuniary interest and has not been extended to those occasions when the dictates of self-respect and of respect due to the House might demand that a Member should refrain from taking part in a division (*k*).

#### PROCEDURE ON BREACH OF ORDER DURING A DIVISION

The Speaker, when his attention has been called to a breach of order in the course of a division has directed that the division should proceed, and has dealt with the matter when the division was completed (*l*).

(*h*) Parl. Deb. (1859) 155, c. 459. See also H. C. Deb. (1926) 199, c. 1172.

(*i*) Parl. Deb. (1904) 136, c. 212.

(*j*) Parl. Deb. (1881) 263, c. 1477; *ibid.* (1884) 287, c. 875.

(*k*) See statement by the Speaker, 18 March 1864, Parl. Deb. (1864) 174, c. 340. For cases of Members who voted against the motion for their suspension, see Mr. Bradlaugh's votes, 22 February 1882, C. J. (1882) 61; 11 February 1884, *ibid.* (1884) 41. On the first occasion, the Speaker stated that it was for the House to consider what should be done with regard to Mr. Bradlaugh's vote; on the second occasion, his vote was disallowed, because he was not a Member of the House. See also division lists, sess. 1887, Nos. 91, 481, 483; sess. 1890, No. 16. For the rule regarding the vote of rival candidates for the Speakership, see p. 268.

(*l*) C. J. (1881) 56; Parl. Deb. (1881) 258, c. 74-77; C. J. (1886) 347; Parl. Deb. (1886) 308, c. 1165.

## CHAPTER XVIII

### MAINTENANCE OF ORDER DURING DEBATE

The subject of this chapter is intended to comprise the body of rules, based upon ancient practice, but modified in some respects by standing orders, which lay down a standard of correct behaviour for Members of either House both in speaking and in listening to the speeches of other Members, and which check and punish lapses from this standard. The rules of order are similar in both Houses, but they have received more explicit form and sanctions in the House of Commons, where the Speaker is invested with powers which are lacking to the Speaker of the House of Lords. The chapter is divided into the following sections :—

1. Rules governing the time and manner of speaking.
2. Rules governing the contents of speeches.
3. Rules of behaviour for Members not speaking.
4. Powers of the Chair to enforce order.

The subject of the first two sections of this chapter to some extent overlaps that of the previous chapter on "The Process of Debate," but in general the contents of the two chapters are fairly clearly distinguished, as the former chapter deals with the forms employed for the purpose of eliciting a decision of the House, while the present chapter is concerned principally with the rules which are designed to secure orderliness and parliamentary behaviour in the course of a debate.

#### 1. RULES GOVERNING THE TIME AND MANNER OF SPEAKING

##### MANNER OF SPEAKING

In the House of Lords, pursuant to S.O. No. XXV, a Peer addresses his speech "to the rest of the Lords in general." In the Commons, a Member addresses the Speaker; and it is irregular for him to direct his speech to the House or to any party on either side of the House. A Member must address the House in English (*a*).

**Reading speeches.**—A Member is not permitted to read his speech (*b*), but may refresh his memory by a reference to notes. The reading of written speeches, which has been allowed in other deliberative assemblies, has never been recognized in either House of Parliament. A Member may read extracts from documents, but his own

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(*a*) Parl. Deb. (1901) 89, c. 546.

(*b*) C. J. (1547-1628) 272, 494; Parl. Deb. (1806) 7, c. 208; *ibid.* (1833) 17, c. 1281; *ibid.* (1846) 83, c. 1169; *ibid.* (1875) 223, c. 178; *ibid.* (1877) 235, c. 773; *ibid.* (1903) 122, c. 554; *ibid.* (1908) 192, c. 742; H. C. Deb. (1916) 80, c. 391. See also Colchester, ii, 60, 432.

language must be delivered *bona fide* in the form of an unwritten composition. The purpose of this rule is primarily to maintain the cut and thrust (c) of debate, which depends upon successive speakers moulding their speeches to some extent upon the arguments of earlier speeches, and decays under a régime of set speeches prepared beforehand without reference to each other.

As the real purpose of the rule is to preserve the spirit of debate, it is not unreasonably relaxed in the case of opening speeches, whenever there is special reason for precision of statement, as in the case of important ministerial statements especially on foreign affairs, or matters which involve agreements with outside bodies, or highly technical bills. Even at a later stage of a debate prepared statements on such subjects are read without objection being taken, though they should not constitute an entire speech. The Chair does not as a rule intervene unless appealed to, and, unless there is good ground for interfering in the interests of debate, usually passes off the matter with a remark to the effect that the notes used by the honourable Member appear to be unusually full, or that the honourable Member has provided himself with rather copious notes; H. C. Deb. (1935-36) 307, c. 385; *ibid.* (1937-38) 330, c. 1494. The reading of speeches is even more inappropriate in a committee than in the House itself.

An attempt to influence the course of a debate by the reading of arguments or letters from persons of authority outside is repugnant to the spirit of debate, although it was permitted on one recorded occasion (d).

**Place of speaking.**—In both Houses every Member who speaks rises in his place and stands uncovered. The only exception to the rule is in cases of sickness or infirmity, when the indulgence of a seat is allowed, at the suggestion of a Member and with the general acquiescence of the House (e). The only occasion, in both Houses, when a Member speaks sitting and covered is when a question of order arises during a division (f). A Member may speak from the side galleries, appropriated to Members (though this is inconvenient and rarely resorted to), but not from below the bar (g).

**Time of speaking.**—Debate arises when a question has been proposed by the Speaker and before it has been fully put. In the House of Lords, under S.O. No. XXX, "when a question has been entirely put by the Lord Speaker, no Lord is to speak on the question before voting;" and a question being entirely put implies that the voices have also been given. In the Commons no Member may speak to any question after the same has been fully put by the Speaker; and a

(c) See Mr. Speaker's remarks, H. C. Deb. (1935-36) 307, c. 7.

(d) Parl. Deb. (1873) 217, c. 841. In 1885 the Speaker, when consulted privately about the propriety of using in debate a letter from Mr. Gladstone about a bill under discussion, expressed his disapproval of an attempt to carry on debate by proxy.

(e) Lord Wynford, L. J. (1831-32) 167; Mr. Wynn, Parl. Deb. (1843) 67, c. 658; H. C. Deb. (1919) 112, c. 456. Questions proposed by the Speaker sitting owing to illness, C. J. (1866) 197.

(f) Parl. Deb. (1883) 278, c. 854; *ibid.* (1886) 308, c. 1164; *ibid.* (1904) 135, c. 1024.

(g) Parl. Deb. (1879) 246, c. 1362; H. C. Deb. (1919) 112, c. 1962; *ibid.* (1919) 116, c. 105; *ibid.* (1920) 128, c. 31, 41.

question is fully put when he has taken the voices both of the ayes and of the noes (*h*).

# PRECEDENCE IN SPEAKING

**Lords.**—Owing to the limited authority of the Lord Speaker in directing the proceedings of the House of Lords, the right of a Peer to address their lordships depends solely upon the will of the House. When two Peers rise at the same time, unless one immediately gives way, the House calls upon one of them to speak; and if each be supported by a party, there is no alternative but a division. Thus, on 7 February 1775, the Earl of Dartmouth and the Marquis of Rockingham both rising to speak, it was resolved, upon question, that the former “shall now be heard” (*i*). If the Lord Chancellor rises from the woolsack to address the House, it is customary to give him precedence over other Peers who may rise at the same time (*k*).

**Commons.**—In the Commons, when two or more Members rise to speak, the Speaker calls on the Member who, on rising in his place, is first observed by him. Formerly, if the Speaker’s call was questioned by the House, a motion was made that one among the Members who had risen to speak “be now heard” or “do now speak” (*l*). This mode of proceeding is not supported by present usage (*m*). It is the Speaker’s duty to watch Members as they rise to speak; and the decision should be left with him. In the Commons not less than twenty Members have often been known to rise at once, and order can only be maintained by acquiescence in the call of the Speaker, who, to elicit discussion in the most convenient form, calls, as a rule, upon Members on either side of the House alternately, who answer one another.

On 26 February 1872, observations were made concerning a supposed “Speaker’s List” by which his choice was governed. Such a list, however, was disclaimed by the Speaker himself, and by Mr. Gladstone on behalf of himself and the secretary to the treasury, *Parl. Deb.* (1872) 209, c. 1032. See also *H. C. Deb.* (1909) 1, c. 236 and *ibid.* (1915–16) 77, c. 1457, as to Mr. Speaker’s choice among Members desiring to move concurrent amendments.

It is now the practice for Members who wish to speak in a particular debate to submit their names in advance to the Speaker. This practice, while not fettering the discretion of the Speaker, affords to Members who avail themselves of it a better opportunity of “catching the Speaker’s eye”; and to the Speaker a means of distributing the available time as equitably as possible between the various sections of opinion (*n*).

In debates on bills and certain kinds of motions, when a series of amend-

(*h*) 17 May 1606, “Any man may speak after the affirmative question and before the negative.” *C. J.* (1547–1628) 310; *Parl. Deb.* (1819) 40, c. 79, Colchester, iii. 74; *H. C. Deb.* (1913) 50, c. 1673, 1859; *ibid.* (1922) 152, c. 111.

(*i*) *L. J.* (1774–76) 305; see also *Parl. Deb.* (1810–11) 18, c. 719, *n*.; *L. J.* (1884) 325; *H. L. Deb.* (1911) 9, c. 1059.

(*k*) Debate on Roman Catholic Relief Bill, 3 April 1829, when the Lord Chancellor and Lord Kenyon rose together, *Parl. Deb.* (1829) 21, c. 187.

(*l*) 2 *Cav. Deb.* 386.

(*m*) *Parl. Deb.* (1905) 142, c. 204, 433.

(*n*) See the Speaker’s remarks, *H. C. Deb.* (1935–36) 307, c. 300.



ments stands upon the paper, Members are called in the order in which their amendments stand (see p. 393). But a Member, who, having received the Speaker's call, is "in possession of the House," cannot be interrupted by a Member who desires to gain priority in moving an amendment or to make an explanation (see p. 421) unless he chooses to give way.

*New Members.*—A new Member who has not previously spoken, is generally called upon, by courtesy, in preference to other Members rising at the same time : but this privilege is not conceded unless claimed within the Parliament to which the Member was first returned.

On 25 March 1859, it was claimed in vain for Mr. Beaumont, who had sat in the previous Parliament, Parl. Deb. (1859) 153, c. 839.

*Precedence on resuming an adjourned debate.*—On resuming an adjourned debate, the Member who moved its adjournment is, by courtesy, entitled to speak first on the resumption of the debate : but for that purpose he must rise in his place in order to avail himself of his privilege, as, unless he rises, it is not the duty of the Speaker to call upon him (*o*) ; though if, having obtained this advantage, he does not avail himself thereof at the resumption of the debate, he is not thereby debarred from subsequently joining therein (*p*). A Member who moves the adjournment of a debate with a view to speaking upon the main question on a future day, must, to obtain this privilege, confine himself to that formal motion (*q*). A Member who has moved or seconded a motion for the adjournment of a debate, which has been negatived, is not entitled to speak again to the main question (*r*) ; and the Member whose subsequent motion for adjournment has been agreed to is, therefore, entitled to be called upon on resuming the debate (*s*). If a motion for adjournment to secure the power of first speech on the resumption of the debate be discussed until the business of the House is interrupted and adjourned pursuant to the standing orders, the mover of the motion, although his motion has lapsed (see pp. 366-7), does not on that account lose the privilege which he sought by making the motion for adjournment (*t*). In like manner, when a debate has been adjourned (*u*), while a Member was speaking, upon the interruption of business prescribed by the standing orders, he has been allowed, on the next occasion, to resume the adjourned debate, and continue his speech (*a*).

#### RESTRICTION OF SPEECHES

Except on occasions when a reply is permitted (see p. 422), or in a committee, it is a rule, strictly observed in both Houses, that no Member shall speak twice to the same question, unless he speaks to explain some part of his speech which has been misunderstood. Accordingly, when a Member speaks to a motion and resumes his seat without moving

(*o*) Parl. Deb. (1853) 126, c. 1243 ; *ibid.* (1858) 148, c. 979.

(*p*) Parl. Deb. (1886) 308, c. 614 ; H. C. Deb. (1912) 38, c. 624.

(*q*) H. C. Deb. (1909) 5, c. 1552.

(*r*) Parl. Deb. (1868-69) 194, c. 1451, 1467 ; *ibid.* (1876) 227, c. 1098 ; *ibid.* (1905) 141, c. 330 ; H. C. Deb. (1923) 162, c. 1029.

(*s*) Parl. Deb. (1872) 213, c. 760. See also *ibid.* (1874) 220, c. 1183-85, 1527.

(*t*) Parl. Deb. (1892) 7, c. 300, 333.

(*u*) Parl. Deb. (1809) 13, c. 114.

(*a*) H. C. Deb. (1937-38) 329, c. 165, 243.

an amendment that he intended to propose, he cannot subsequently rise to move the amendment, having already spoken to the question before the House (b). So also, a Member who, when an order of the day has been read, makes a prolonged appeal that the consideration of the order should be deferred and resumes his seat, cannot again address the House thereon (c). A second speech has been allowed to an unofficial Member under special circumstances, on an explanation from the Speaker, the pleasure of the House having been signified (d); and a second speech is generally allowed to a Minister, who has spoken early in the debate, whenever circumstances make that concession convenient.

**Relaxation of rule on consideration of bill reported from a standing committee.**—On the consideration by the House of a bill or that portion of a bill which has been committed to a standing committee, S.O. No. 46 (3) provides that the rule against speaking more than once does not apply to the Member in charge of the bill or to the mover of any amendment or new clause in respect of that amendment or clause.

**Right of explanation: Lords.**—The right of an explanation is regulated in the House of Lords by S.O. No. XXVII, which prescribes that

“No lord is to speak twice to any bill, at one time of reading it, or to any other proposition, except the mover in reply, unless it be to explain himself in some material point of his speech (no new matter being introduced), and that not without the leave of the house first obtained.”

**Commons.**—In the Commons, a Member who, during a debate, has spoken to a question may again be heard to offer explanation of some material part of his speech which has been misunderstood: but he must not introduce new matter, or endeavour to strengthen by new arguments his former position, which he alleges to have been misunderstood, or to reply to other Members (e). Somewhat greater latitude is permitted in cases of personal explanation, where a Member's character or conduct has been impugned in debate (f).

**Time for explanation.**—The proper time for explanation is at the conclusion of the speech which calls for it; but it is a common practice for the Member desiring to explain to rise immediately the statement is made to which his explanation is directed, when, if the Member in possession of the House gives way and resumes his seat, the explanation is at once received: but the explanation cannot then be offered, if the Member who is speaking declines to give way (g).

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(b) Parl. Deb. (1867–68) 191, c. 1083. For the relaxation of this rule in the case of motions relating to the business of the House, see p. 398.

(c) Parl. Deb. (1892) 4, c. 1930.

(d) Parl. Deb. (1864) 173, c. 1549; *ibid.* (1905) 145, c. 833; H. C. Deb. (1909) 12, c. 2105; *ibid.* (1920) 128, c. 1472.

(e) Parl. Deb. (1862) 165, c. 1032; *ibid.* (1862) 167, c. 1216; *ibid.* (1864) 175, c. 462; *ibid.* (1875) 223, c. 367, 1009; *ibid.* (1875) 226, c. 525, 567; *ibid.* (1876) 231, c. 301; *ibid.* (1878) 241, c. 332; *ibid.* (1878) 242, c. 1709.

(f) Parl. Deb. (1846) 87, c. 537.

(g) Parl. Deb. (1860) 157, c. 1407; *ibid.* (1861) 163, c. 83; *ibid.* (1865) 179, c. 572; *ibid.* (1866) 183, c. 800; *ibid.* (1867–68) 192, c. 749; *ibid.* (1871) 208, c. 1190; *ibid.* (1872) 213, c. 728; *ibid.* (1907) 179, c. 1890; H. C. Deb. (1919) 121, c. 707.

**Right of reply and reservation of speech.**—A reply is only allowed to the Peer or Member who has proposed a substantive question to the House; and this privilege is accorded to the mover of a substantive motion for the adjournment of the House (*h*). It is not conceded to a Member who moves an order of the day, such as a motion that a bill be read a second time; or an amendment (*i*), the previous question (*k*), an adjournment during a debate (*l*), a motion on the consideration of Lords' amendments, or an instruction to any committee (*m*). Under these circumstances, it is not uncommon for a Member to move an order of the day or to second a substantive motion by raising his hat, without rising to address the chair, and to reserve his speech for a later period in the debate. Formerly a Member who had moved an order of the day or seconded a motion in this manner, was precluded from afterwards addressing the House upon the same question, or was heard merely by the indulgence of the House (*n*); but under present usage, the option of speaking at a subsequent period of the debate has been conceded (*o*). In moving or seconding a motion for adjournment or an amendment, a Member cannot avail himself of this privilege (*p*), as he must rise in his place to make or second the motion, and thus cannot avoid addressing the House, however shortly. As a Member who moves an amendment cannot speak again, so a Member who seconds an amendment is equally unable to speak again upon the main question, after the amendment has been withdrawn or otherwise disposed of. In both cases, the Members have already spoken while the main question was before the House and before the amendment had been proposed from the chair (*q*). For the same reason, a Member who has addressed the House in moving the second reading of a bill cannot subsequently move the adjournment of the debate, unless an amendment has been since proposed (*r*), nor can a Member who has spoken upon an amendment proposed on consideration of a bill, as amended, move the adjournment of the debate, or, until the amendment has been disposed of, move the adjournment of further consideration of the bill, as amended (*s*); nor can a Member who has unsuccessfully moved the adjournment of a debate (or of the House) subsequently speak upon the question upon which he has moved the adjournment of the debate (*t*) (or the House).

(*h*) Parl. Deb. (1858) 148, c. 762, 770; *ibid.* (1859) 153, c. 1301, 1342; *ibid.* (1867) 186, c. 1505; *ibid.* (1871) 207, c. 1350; *ibid.* (1872) 210, c. 1846.

(*i*) Parl. Deb. (1864) 174, c. 2022; *ibid.* (1878) 240, c. 1527.

(*k*) 8 February 1858 (Operations in India, Mr. Disraeli), Parl. Deb. (1858) 148, c. 890.

(*l*) Parl. Deb. (1867) 186, c. 1505.

(*m*) Parl. Deb. (1867) 186, c. 1443; Conventual and Monastic Institutions, 10 May, 1870 (Mr. Matthews); *ibid.* (1870) 201, c. 530, 534; Charing Cross and Victoria Embankment Bill, 27 February 1873 (Lord Elcho); Parl. Deb. (1873) 214, c. 314-15.

(*n*) Parl. Deb. (1821) 4, c. 1013.

(*o*) Parl. Deb. (1872) 210, c. 304; H. C. Deb. (1922) 155, c. 1626, 2501.

(*p*) Parl. Deb. (1851) 118, c. 1147, 1163; *ibid.* (1855) 138, c. 1300, 1756; *ibid.* (1892) 5, c. 1744; H. C. Deb. (1923) 163, c. 2100.

(*q*) Parl. Deb. (1878) 237, c. 1532; *ibid.* (1878) 240, c. 123; *ibid.* (1878) 241, c. 1311; *ibid.* (1901) 89, c. 1077, 1128.

(*r*) Parl. Deb. (1876) 227, c. 1659.

(*s*) H. C. Deb. (1919) 117, c. 1346.

(*t*) H. C. Deb. (1928) 215, c. 592, 593.

*Practice in Committee.*—In a committee of the whole House the restriction upon speaking more than once is altogether removed, as will be more fully explained in speaking of the proceedings of committees (see p. 572).

**Power to speak again when new question is proposed.**—The adjournment of a debate does not enable a Member to speak again upon a question, when the discussion is renewed on another day, however distant (*u*): but directly a new question has been proposed, as, "that this House do now adjourn," "that the debate be now adjourned," the previous question (*a*), or an amendment, Members are at liberty to speak again; as the rule applies strictly to the prevention of more than one speech to each separate question proposed: but a Member who has already spoken to a question, or has moved or seconded an amendment thereto (*b*), or a motion for the adjournment of the debate, may not rise again to move an amendment, or the adjournment of the House or of the debate, or any similar question, though he may speak to these new questions when proposed by other Members.

On 27 October 1884, an amendment to add words to the address in answer to the Queen's speech was amended, without opposition, by leaving out the earlier portion of it. A doubt was raised whether the amendment so amended had not become a new question, upon which Members who had already spoken might again address the House, but after full consideration it was ruled that it was still the same question (*c*).

**Speech on point of order.**—A Member who has already spoken, may rise and speak again upon a point of order or privilege, if he confines himself to that subject, and does not refer to the general tenour of the debate (*d*).

## 2. RULES GOVERNING THE CONTENTS OF SPEECHES

### SUMMARY OF RULES

A Member, while speaking to a question, may not introduce matter which is irrelevant to that question; allude to debates of the same session upon any question or bill not then under discussion; speak against or reflect upon any determination of the House, unless he intends to conclude with a motion for rescinding it; allude to debates of the same session in the other House; utter treasonable or seditious words, or use the King's name irreverently, or to influence the debate; speak offensive and insulting words against the character or proceedings of either House; refer to matters pending a judicial decision; reflect upon the conduct of the sovereign or of other persons in authority; make personal allusions to members of Parliament; or obstruct the business of the House.

### RELEVANCY IN DEBATE

A Member, when called to speak, must direct his speech to the question then under discussion, or to a motion or amendment he intends

(*u*) 1 C. J. (1604) 245.

(*a*) Parl. Deb. (1842) 65, c. 826.

(*b*) Parl. Deb. (1867-68) 190, c. 674; *ibid.* (1872) 211, c. 870.

(*c*) C. J. (1884-85) 10; Parl. Deb. (1884-85) 293, c. 298.

(*d*) Parl. Deb. (1868-69) 195, c. 2008.

to move (*e*), or to a point of order. The precise relevancy of an argument is not always perceptible (*f*); when, however, a Member wanders from the question, the Speaker reminds him that he must speak to the question. Debate must not stray from the question before the House to matters which have been decided during the current session (*g*), or anticipate a matter appointed for the consideration of the House (*h*), or of which notice has been given (*i*).

For instance, upon a motion for the appointment of a committee upon the game laws, a Member was restrained from criticizing the provisions of certain bills before the House for the amendment of those laws (*j*); though when bills, in the charge of the Government, dealing with subjects bound together by a common principle, stand in a series upon the notice paper, debate on the first bill may include a discussion of the bills of a cognate character (*k*). On the consideration by the House of the names, taken *seriatim*, of commissioners to be appointed pursuant to the provisions of a bill (*l*), discussion, sought to be raised upon each name, of the general policy involved in the appointment of the commissioners was not permitted. On a motion for the appointment of a select committee (*m*) or for determining the number of its members (*n*), the merits of the matter referred to the committee have not been allowed to be debated. On the proposal that a sessional order be made a standing order of the House the order itself is not open to debate (*o*). Nor on a motion prescribing procedure for concluding the consideration of stages of a bill or other business, can the bill or the business itself be discussed (*p*). Upon a motion approving the policy of the Government respecting the draft conventions and recommendations adopted by an International Labour Conference, matters discussed at, but not recommended by, the Conference were held to be excluded from the debate (*q*).

Upon a motion to disapprove consolidated regulations (the National Health Insurance (Medical Benefit Consolidated) Regulations, 1928) the Speaker refused to allow the discussion of a regulation which was already in force, because the disapproval of the consolidated regulations would have no effect on the validity of any regulations already in force (*r*).

The existence of dominion status and of legislatures within the

(*e*) Parl. Deb. (1902) 112, c. 404; *ibid.* (1906) 167, c. 839; H. C. Deb. (1915) 75, c. 720; *ibid.* (1916) 85, c. 1510.

(*f*) See the celebrated debate, 6 May 1791, on the Quebec Government Bill, in which Mr. Burke insisted upon the relevancy of Paine's Rights of Man, and the recent events of the French Revolution, Lord John Russell's Life of Fox, ii. 253.

(*g*) Parl. Deb. (1908) 197, c. 161.

(*h*) Parl. Deb. (1856) 140, c. 2037; *ibid.* (1862) 167, c. 1140; *ibid.* (1865) 176, c. 1797; *ibid.* (1867) 189, c. 91, 96; *ibid.* (1872) 210, c. 1815; *ibid.* (1872) 212, c. 1430; *ibid.* (1878) 241, c. 807; *ibid.* (1907) 171, c. 1740.

(*i*) Parl. Deb. (1857) 146, c. 1702; *ibid.* (1859) 153, c. 331; *ibid.* (1906) 165, c. 662; *ibid.* (1907) 180, c. 1621.

(*j*) Parl. Deb. (1868-69) 195, c. 1718; see also *ibid.* (1881) 257, c. 812.

(*k*) Parl. Deb. (1888) 324, c. 1066; *ibid.* (1889) 336, c. 1594. See also *ibid.* (1896) 39, c. 5; H. C. Deb. (1921) 140, c. 566; *ibid.* (1921) 147, c. 18, 23; *ibid.* (1924) 174, c. 1597; *ibid.* (1928) 214, c. 42; *ibid.* 219, c. 2543.

(*l*) Parl. Deb. (1889) 338, c. 638.

(*m*) Parl. Deb. (1905) 146, c. 993; H. C. Deb. (1937-8) 337, c. 2157.

(*n*) H. C. Deb. (1909) 3, c. 997.

(*o*) Parl. Deb. (1887) 312, c. 801; *ibid.* (1901) 89, c. 180; *ibid.* (1902) 115, c. 876.

(*p*) Parl. Deb. (1904) 137, c. 349, 678; *ibid.* (1905) 143, c. 81, 86; *ibid.* (1906) 167, c. 173; H. C. Deb. (1912) 44, c. 1671; *ibid.* (1913) 54, c. 898; *ibid.* (1921) 144, c. 485.

(*q*) H. C. Deb. (1921) 148, c. 354.

(*r*) H. C. Deb. (1929) 224, c. 1097.

Empire possessing large delegated powers provide difficult problems in relation to the application of rules of relevancy. Matters affecting the domestic affairs of a dominion cannot be raised (*s*), but where it has been claimed that the interests of this country or its contractual relations are being affected by a dominion, discussion has been ruled to be permissible (*t*).

A remark which has been ruled to be out of order cannot be subjected to debate (*u*).

Akin to irrelevancy is the frequent repetition of the same arguments, whether those of the Member speaking, or those of other Members; an offence which may be met by the power given to the Chair under S.O. No. 18 (*a*).

**Debate on dilatory motions.**—Considerable laxity formerly arose in debate upon questions of adjournment (*b*), and though efforts were made to enforce a stricter practice, it was not until 27 November 1882, that a standing order was passed, which restricts debate on all dilatory motions, such as motions for the adjournment of a debate, or of the House during any debate, or that the Chairman report progress, or leave the chair, to the matter of such motion (*c*); and forbids Members who move or second any such motion from moving or seconding a similar motion during the same debate (S.O. No. 21). The standing order has been applied to a motion that further proceeding on consideration of a bill, as amended, be adjourned (*d*). The Speaker, or the Chairman, if he be of opinion that such dilatory motions are an abuse of the rules of the House, is empowered to put forthwith the question thereon from the chair (*e*) or to decline to propose the question thereon to the House (*f*).

**Motions for adjournment of the House.**—Motions for the adjournment of the House, made when there is no question under discussion, must be clearly distinguished from similar motions made during a debate (see p. 382). The former can have no object but the discussion of some extraneous subject; the latter have reference only to the adjournment of the question then before the House. The discussion of the former is governed, however, by the established rules of debate.

On a motion for the adjournment of the House moved because the business of supply had been concluded on an allotted day before the hour at which any other business could be taken (see p. 687), the Speaker has refused to

(*s*) H. C. Deb. (1938-9) 350, c. 1064.

(*t*) H. C. Deb. (1929) 232, c. 1932.

(*u*) Parl. Deb. (1886) 308, c. 738.

(*a*) For examples, see Parl. Deb. (1878) 240, c. 1662. A member suspended for persistent repetition or continued irrelevance, *ibid.* (1881) 257, c. 1349; *ibid.* (1881) 258, c. 1620-1627; C. J. (1897) 264.

(*b*) Parl. Deb. (1848) 99, c. 1147, 1196; *ibid.* (1848) 101, c. 508; *ibid.* (1849) 102; c. 226, 1100; *ibid.* (1877) 232, c. 1733.

(*c*) See Mr. Speaker's remarks, H. C. Deb. (1935) 299, c. 913; *ibid.* (1938-9) 352, c. 1127.

(*d*) C. J. (1896) 316; *ibid.* (1922) 314.

(*e*) C. J. (1888) 414; *ibid.* (1902) 326; *ibid.* (1905) 269.

(*f*) Parl. Deb. (1887) 311, c. 1648; *ibid.* (1888) 328, c. 1837; *ibid.* (1888) 329, c. 1095; *ibid.* (1889) 338, c. 887; *ibid.* (1889) 339, c. 1733; *ibid.* (1895) 36, c. 355; *ibid.* (1901) 98, c. 1213; *ibid.* (1905) 150, c. 199. See also the Speaker's remarks in refusing to put a motion for the adjournment of the debate for the purpose of bringing on a subsequent order of the day, *ibid.* (1894) 24, c. 1661.

allow a Member to discuss the details of a bill standing on the notice paper for that sitting (g). On the motion for the adjournment of the House or for the adjournment for a recess such as that at Easter, Members have been precluded from anticipating the discussion of orders of the day (h) and notices of motions (i) upon the notice paper or order book, or from discussing matters that would entail legislation (j) or for which there is no government responsibility, H. C. Deb. (1939-40) 356, c. 1228, &c. It has also been held that a Member could not raise on the motion for the adjournment for a recess a matter that could be properly raised on the report of the vote on account which stood on that day's order paper (k). It has also been held that a debate in Committee of Supply cannot be continued on the motion for the adjournment at eleven o'clock that evening, H. C. Deb. (1941-2) 383, c. 114. As has already been stated in regard to motions, in determining whether a discussion is out of order on the ground of anticipation the probability of the matter anticipated being discussed within a reasonable time must be considered (S.O. No. 9).

For debates upon the effect of notices of motions standing on the order book both upon debates on motions for the adjournment of the House and upon the power of moving the adjournment of the House under S.O. No. 8, see Parl. Deb. (1897) 48, c. 1349; *ibid.* (1900) 81, c. 1414; *ibid.* (1904) 135, c. 379; *ibid.* (1907) 171, c. 1883.

On a motion that the House at its rising do adjourn to a day beyond the next ordinary sitting day (l) (see pp. 310-11), or on a motion to secure a sitting of the House on the following day, when the House would not have sat otherwise (m), it has been ruled that discussion on any matter that was irrelevant to the motion itself was out of order.

**Motions for withdrawing bills, etc.**—It is not regular to discuss the merits of a bill or other order of the day upon a motion for its withdrawal, and debate must be strictly confined to the object of the motion (n). A similar restraint has been placed upon the debate upon a motion to recommit a bill (see p. 541).

#### REFERENCE TO PRIOR DEBATES

Reference to debates of the current session is discouraged even if such reference is not irrelevant, as it tends to re-open matters already decided (o). The same result is often obtained by indirect methods.

(g) Parl. Deb. (1901) 92, c. 301.

(h) Parl. Deb. (1860) 157, c. 1804; *ibid.* (1867) 187, c. 775; *ibid.* (1901) 94, c. 995, 999; H. C. Deb. (1910) 15, c. 1013; *ibid.* (1937-8) 339, c. 454.

(i) Parl. Deb. (1860) 157, c. 1166, *ibid.* (1901) 94, c. 1011; H. C. Deb. (1910) 14, c. 1054.

(j) Parl. Deb. (1899) 71, c. 1034; *ibid.* (1903) 123, c. 204; *ibid.* (1904) 132, c. 1043. Upon the motion for the adjournment of the House moved when the orders of the day have been disposed of, H. C. Deb. (1924) 170, c. 844, 2728; *ibid.* (1924) 171, c. 903, 1088.

(k) Parl. Deb. (1896) 39, c. 403.

(l) Parl. Deb. (1902) 116, c. 1030; H. C. Deb. (1921) 149, c. 363; *ibid.* (1939-40) 364, c. 1343.

(m) H. C. Deb. (1917) 97, c. 1579.

(n) Parl. Deb. (1873) 215, c. 304; *ibid.* (1875) 226, c. 860; *ibid.* (1889) 337, c. 1167; *ibid.* (1889) 339, c. 1493; *ibid.* (1908) 198, c. 2174, H. C. Deb. (1912-13) 47, c. 1042. See also the Speaker's remarks in refusing to propose the question for the adjournment of the debate on such a motion, Parl. Deb. (1902) 113, c. 341.

(o) Parl. Deb. (1876) 231, c. 749; *ibid.* (1878) 238, c. 1403; H. C. Deb. (1933) 283, c. 1258.

Direct reference is permitted, however, when a Member wishes to complain of something said (*p*) or to clear up alleged misrepresentation (*q*) or to make a personal explanation, but only so much of a previous speech should be brought up as is necessary for such purposes (*r*).

Nor is a Member allowed to refer to a speech made in a committee of the whole House (*s*). This rule, however, does not apply to debates upon different stages of a bill. The proceedings and report of a select committee may not be referred to in debate before they have been laid upon the table (see p. 609). Upon a motion which practically rescinded a resolution of the House, reference was permitted to the debate upon that resolution (*t*).

**Reading extracts from speeches, etc.**—A rule exists that a Member may not read any portion of a speech, made in the same session, from a printed book or newspaper (*u*). This rule, indeed, applies strictly to all debates whatsoever, the publication of them being a breach of privilege; but of late years, by general acquiescence, very wide discretion is left to the Chair as to the enforcement of this rule. It is also irregular to read extracts from newspapers, letters or other documents referring to debates in the House in the same session (*a*). Indeed, until 1840, the reading of any extracts from a newspaper, whether referring to debates or not, had been restrained as irregular. But in that year the attempt of the Speaker to enforce the rule was overruled by the House (*b*), and on later occasions both the Speaker and the Chairman have stated that they would not enforce it (*c*).

#### REFLECTING UPON VOTES OF THE HOUSE

The objections to the practice of referring to past debates apply with greater force to reflections upon votes of the House, unless made for the purpose of justifying a motion that the vote be rescinded. Those reflections not only revive discussion upon questions already decided, but are wholly irregular, inasmuch as the Member is himself included in, and bound by, a vote agreed to by a majority (*d*). Reflections also on the action taken by the Speaker, the Chairman of Ways and Means and the House upon a closure motion are not permitted (*e*).

#### ALLUSIONS TO DEBATES IN THE OTHER HOUSE OF THE CURRENT SESSION

The rule that allusions to debates in the other House are out of order, prevents fruitless arguments between members of two distinct bodies

(*p*) Parl. Deb. (1841) 59, c. 485; see also *ibid.* (1842) 65, c. 642.

(*q*) Parl. Deb. (1850) 109, c. 462; see also *ibid.* (1846) 85, c. 300.

(*r*) Parl. Deb. (1856) 140, c. 1708; *ibid.* (1858) 149, c. 10-14; *ibid.* (1877) 235, c. 1192; *ibid.* (1877) 236, c. 36, 172; *ibid.* (1893) 10, c. 523; *ibid.* (1907) 172, c. 1520.

(*s*) Parl. Deb. (1859) 154, c. 985.

(*t*) Parl. Deb. (1871) 235, c. 1703.

(*u*) Parl. Deb. (1870) 203, c. 1613, etc.

(*a*) Parl. Deb. (1846) 84, c. 232; *ibid.* (1859) 154, c. 1200; *ibid.* (1861) 162, c. 1885; *ibid.* (1862) 168, c. 1198; *ibid.* (1866) 183, c. 826; *ibid.* (1867-68) 191, c. 2030; *ibid.* (1871) 206, c. 1339; *ibid.* (1871) 208, c. 1604; *ibid.* (1878) 241, c. 831.

(*b*) Parl. Deb. (1840) 52, c. 1063-1065.

(*c*) Parl. Deb. (1856) 140, c. 764; *ibid.* (1857) 144, c. 2106.

(*d*) 2 Hatsell, 233 n.; see also Parl. Deb. (1867) 186, c. 885.

(*e*) Parl. Deb. (1888) 328, c. 1899; *ibid.* (1888) 329, c. 58; *ibid.* (1891) 354, c. 431; *ibid.* (1896) 39, c. 867; *ibid.* (1896) 40, c. 1731; see also p. 451 n. (*g*).



who are unable to reply to each other, and guards against recrimination and offensive language in the absence of the party assailed: but it is mainly founded upon the understanding that the debates of the other House are not known, and that the House can take no notice of them (*f*). The daily publication of debates in Parliament offers a strong temptation to disregard this rule. The same questions are discussed by persons belonging to the same parties in both Houses, and speeches are constantly referred to by Members, which this rule excludes from their notice (*g*).

In view of the fact that the Government often find it convenient for Ministers to make in the House of Lords official statements of their policy, it is now permissible for Members to refer to and criticise such Government announcements (*h*).

**Debate on bills before the Lords.**—The same rule has been applied to restrain the discussion of a bill which has been passed and sent to the Lords, upon a motion for an address to the Crown (*i*) and on an amendment to the question for the Speaker's leaving the chair for committee (*k*); and a Member has been restrained by the Speaker from commenting upon the proceedings of the House of Lords in arriving at the decision communicated in a message then under consideration (*l*).

**Allusions to reports or proceedings.**—This rule has been held not to apply to reports of committees of the other House, even though they have not been communicated to the Commons (*m*), nor is the rule extended to the votes or proceedings of either House, as they are recorded and printed by authority. Indeed, since 1860 the Lords' Minutes have been placed upon the table of the House of Commons, for reference (*n*).

#### REFERENCES TO THE KING IN DEBATE

#### Disloyal or disrespectful reference to King.—Treasonable or

(*f*) But see Mr. Speaker's remarks, H. C. Deb. (1934) 285, c. 1591.

(*g*) See Lords' Debates, 3 April 1845 (Lord Ashburton), Commons' Debates, 4 April 1845 (Lord J. Russell), on the Ashburton Treaty, Parl. Deb. (1845) 79, c. 2, 172; Commons' Debates (Mr. Ffrench), 21 and 23 July 1845, and Lords' Debates (Lord Brougham), 22 and 24 July 1845, on the Irish Great Western Railway Bill, *ibid.* (1845) 82, c. 805, 872, 964, 1028; Lords' Debates, 27 June 1848 (Earl Grey), *ibid.* (1848) 99, c. 1243; Commons' Debates, 2 April 1852 (Mr. Cobden), *ibid.* (1852) 120, c. 583; Lords' and Commons' Debates, 26 February and 1 March 1858 (Sir R. Bethell and Lord Campbell), *ibid.* (1858) 149, c. 4, 69; and *ibid.* (1865) 177, c. 1557; *ibid.* (1866) 183, c. 1098, as examples of the violation of this rule. See also the Speaker's rulings concerning the power of quotation from a speech in the House of Lords, *ibid.* (1891) 351, c. 1500; *ibid.* (1907) 180, c. 1884; or reference to a ministerial statement made in the House of Lords, H. C. Deb. (1922) 151, c. 2207; and his declaration that it was a very wholesome rule of the House not to allude to statements or debates of the current session in the other House, as to do so might bring the two houses into collision, Parl. Deb. (1893) 15, c. 1781; and *ibid.* (1867-68) 191, c. 1786; *ibid.* (1867-68) 192, c. 1077; *ibid.* (1871) 208, c. 1682; *ibid.* (1876) 229, c. 1630; *ibid.* (1878) 237, c. 1262; *ibid.* (1878) 242, c. 228; *ibid.* (1902) 116, c. 1354; *ibid.* (1907) 176, c. 344; *ibid.* (1908) 193, c. 214; H. C. Deb. (1915) 75, c. 2147; *ibid.* (1922) 157, c. 1828.

(*h*) Speaker's Private Ruling, 29 November 1933; also H. C. Deb. (1931) 304, c. 1579-81; *ibid.* (1936-37) 326, c. 2315; *ibid.* (1935-36) 314, c. 507; *ibid.* (1942-43) 390, c. 373.

(*i*) Parl. Deb. (1876) 228, c. 1183.

(*k*) C. J. (1887) 191; Parl. Deb. (1887) 314, c. 68.

(*l*) Parl. Deb. (1902) 105, c. 732.

(*m*) Parl. Deb. (1848) 99, c. 631.

(*n*) Parl. Deb. (1860) 159, c. 856.

sedition language or a disrespectful use of his Majesty's name would be rebuked by any subject out of Parliament ; and it is only consistent with decency, that a member of the legislature should not be permitted openly to use such language in his place in Parliament. Members have not only been called to order for such offences, but have been reprimanded, committed to the custody of the Serjeant or even sent to the Tower (o).

**Use of King's name to influence debate.**—The irregular use of the King's name to influence a decision of the House is unconstitutional in principle and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating his Majesty's recommendation or consent, through one of his Ministers (see p. 783) ; but his Majesty cannot be supposed to have a private opinion, apart from that of his responsible advisers ; and any attempt to use his name in debate to influence the judgment of Parliament would be immediately checked and censured (p).

The rule, however, must not be construed so as to exclude a statement of facts by a Minister in which the sovereign's name may be concerned (q).

#### WORDS AGAINST PARLIAMENT, OR EITHER HOUSE

It is obviously unbecoming to permit offensive expressions against the character and conduct of Parliament to be used without rebuke ; for they are not only a contempt of that high court, but are calculated to degrade the legislature in the estimation of the people. If directed against the other House, and passed over without censure, they would appear to implicate one House in discourtesy to the other (r) ; if against the House in which the words are spoken, it would be impossible to overlook the disrespect of one of its own members. If, when called to order, the Member fails to retract or explain his words and make a satisfactory apology, he may be punished by a reprimand or commitment (s) or under S.O. No. 17 or No. 19 (see pp. 440-6). It is most important that the use of such words should be immediately reprovved in order to avoid complaints and dissensions between the two Houses.

**Against a statute.**—Disrespectful or abusive mention of a statute would seem to be partly open to the same objections as improper language applied to Parliament itself ; for it imputes discredit to the legislature which passed it, and has a tendency to bring the law into

(o) C. J. (1547-1628) 50, 51, 104, 333, 335, 866 ; *ibid.* (1667-87) 760 ; *ibid.* (1693-97) 581 ; *ibid.* (1705-08) 70 ; *ibid.* (1714-18) 49, 54, 653 ; Parl. Hist. (1660-88) 4, c. 1385 ; *ibid.* (1714-22) 7, c. 51, 511 ; D'Ewes, 241-44.

(p) C. J. (1547-1628) 697 ; *ibid.* (1640-41) 27, 344 ; *ibid.* (1783) 842 ; Parl. Deb. (1808) 10, c. 577 ; *ibid.* (1812) 22, c. 51 ; H. C. Deb. (1936-37) 317, c. 71.

(q) 7 Chandler, Deb. 61, 64 ; Parl. Deb. (1843) 69, c. 24, 574 ; *ibid.* (1876) 228, c. 2037. See also H. C. Deb. (1914-16) 71, c. 227.

(r) Parl. Deb. (1887) 313, c. 101 ; *ibid.* (1887) 319, c. 303 ; *ibid.* (1889) 337, c. 1104 ; *ibid.* (1892) 5, c. 1842 ; *ibid.* (1893) 8, c. 1780 ; *ibid.* (1906) 167, c. 1771. The Speaker has condemned the use by a Member of improper language directed against the House of Lords, in giving notice of a motion, *ibid.* (1884) 290, c. 691. See also questions to ministers, p. 336.

(s) C. J. (1667-87) 147, 760 ; *ibid.* (1688-93) 512 ; *ibid.* (1693-97) 581. See also Mr. Duffy's case, *ibid.* (1852-53) 461.

contempt; though the necessity of the repeal of a law justifies, as an argument for that course, its condemnation in debate. A statement that the enactment of a law may justify an appeal to force is not within the cognizance of the Chair (*t*).

#### MATTERS PENDING JUDICIAL DECISION

Matters awaiting the adjudication of a court of law should not be brought forward in debate. This rule was observed by Sir Robert Peel and Lord John Russell, both by the wording of the speech from the throne and by their procedure in the House, regarding Mr. O'Connell's case, and has been maintained by rulings from the chair (*u*).

#### REFLECTIONS ON THE SOVEREIGN, ETC.

Unless the discussion is based upon a substantive motion, drawn in proper terms (see p. 375), reflections must not be cast in debate upon the conduct of the sovereign, the heir to the throne, or other members of the royal family (*a*), the Viceroy and Governor-General of India, the Governor-General of a Dominion (*b*), the Speaker (*c*), the chairman of ways and means (*d*), members of either House of Parliament (*e*), or judges of the superior courts of the United Kingdom (*f*), including persons holding the position of a judge, such as a judge of a Court of Bankruptcy or a county court (*g*). Nor may opprobrious reflections

(*t*) Parl. Deb. (1886) 308, c. 1108.

(*u*) Parl. Deb. (1844) 72, c. 85, 98; *ibid.* (1889) 335, c. 992, 1254, 1267; *ibid.* (1889) 337, c. 887; H. C. Deb. (1921) 139, c. 2144, 2268. See also the Speaker's remarks in ruling out of order the discussion of allegations of bribery and corruption at an election before the expiration of the period during which an election petition could be lodged, Parl. Deb. (1898) 64, c. 868.

(*a*) Parl. Deb. (1887) 312, c. 1061; *ibid.* (1889) 338, c. 1338; *ibid.* (1895) 33, c. 896; *ibid.* (1901) 93, c. 1362; *ibid.* (1901) 97, c. 1164; *ibid.* (1901) 99, c. 471; H. C. Deb. (1927) 202, c. 1231.

(*b*) H. C. Deb. (1910) 15, c. 894.

(*c*) C. J. (1884-85) 78; Parl. Deb. (1887) 311, c. 954; *ibid.* (1887) 313, c. 472; *ibid.* (1905) 142, c. 1507.

(*d*) Parl. Deb. (1887) 302, c. 1710; *ibid.* (1901) 95, c. 235; H. C. Deb. (1917) 100, c. 1892.

(*e*) Lord Chancellor, Parl. Deb. (1898) 56, 859; *ibid.* (1899) 75, c. 890; *ibid.* (1906) 156, c. 597; ex-Lord Chancellor, *ibid.* (1906) 167, c. 1367; a peer, H. C. Deb. (1914) 60, c. 279; chairman of a standing committee, *ibid.* (1924) 170, c. 2769. See Speaker's ruling, that the explicit statement of the prime minister must be accepted, Parl. Deb. (1883) 280, c. 116. Discussion of the conduct of the chairman of a joint committee on a bill has been ruled out of order in committee on the re-committed bill, *ibid.* (1902) 111, c. 19, 27, 707; *ibid.* (1908) 196, c. 363, 568. Privy Councillors are not protected by this rule, H. C. Deb. (1933) 277, c. 1222-26.

(*f*) Parl. Deb. (1877) 234, c. 1558; *ibid.* (1878) 238, c. 1953; *ibid.* (1884) 286, c. 1732; *ibid.* (1887) 313, c. 637; *ibid.* (1887) 315, c. 1530; *ibid.* (1888) 322, c. 463; *ibid.* (1893-94) 12, c. 1807; *ibid.* (1893-94) 14, c. 1090; *ibid.* (1895) 36, c. 201; *ibid.* (1897) 52, c. 23; *ibid.* (1899) 75, c. 891; *ibid.* (1901) 96, c. 306; *ibid.* (1904) 132, c. 683, 696; *ibid.* (1906) 163, c. 507; *ibid.* (1908) 183, c. 807; H. C. Deb. (1911) 30, c. 1170; *ibid.* (1912) 41, c. 2779. Reflections against the judges generally are equally out of order, *ibid.* (1911) 26, c. 1082; *ibid.* (1917) 91, c. 664, 667. The Speaker has also intimated that the same rule should be applied to the case of judges in India and other parts of the empire, *ibid.* (1912) 40, c. 622.

(*g*) Parl. Deb. (1887) 312, c. 1110; *ibid.* (1887) 320, c. 1024, 1031; *ibid.* (1906) 164, c. 1572. The Speaker has also ruled out of order language disrespectful to persons administering justice, such as resident magistrates in Ireland, *ibid.* (1902) 103, c. 462; and criticism of sentences imposed by magistrates, H. C. Deb. (1926) 196, c. 2498, including Justices of the Peace, *ibid.* (1926) 200, c. 855.

be cast in debate on sovereigns and rulers (*h*) over, or governments of (*i*), countries in amity with his Majesty, or their representatives in this country (*j*).

PERSONAL ALLUSIONS AND UNPARLIAMENTARY EXPRESSIONS

In order to guard against all appearance of personality in debate, it was formerly the rule in both Houses that no Member should refer to another by name. In the upper House, however, a Lord is now alluded to by name, but in the Commons each Member must be distinguished by the office he holds, by the place he represents or by other designations, as "the noble Lord the secretary of state for foreign affairs," "the honourable" or "right honourable gentleman the member for York," or "the honourable and learned member who has just sat down" (*k*).

The same rule applies to standing committees, H. C. Deb. (1919) 118, c. 1823.

**Allegations against Members.**—Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a Member is canvassing the opinions and conduct of his opponents in debate.

The same right to claim courteous treatment in debate is due alike between both Houses of Parliament; and abusive language, and imputations of falsehood, uttered by members of the House of Commons against members of the House of Lords have been met by the immediate intervention of the Chair to compel the withdrawal of the offensive words (*l*), or, in default, by the punishment of suspension (*m*).

It will also be useful to give examples here of expressions which are unparliamentary and call for prompt interference. These may be classified as follows:—

1. The imputation of false or unavowed motives.

See Parl. Deb. (1864) 176, c. 1005; *ibid.* (1867-68) 193, c. 1741; *ibid.* (1903) 125, c. 1530; *ibid.* (1904) 133, c. 748; *ibid.* (1906) 155, c. 261.

2. The misrepresentation of the language of another and the accusation of misrepresentation.

See 2 Cav. Deb. 118, 120; Parl. Deb. (1848) 96, c. 1206; *ibid.* (1871) 205, c. 1743; *ibid.* (1907) 171, c. 376; H. C. Deb. (1930-31) 256, c. 1596.

3. Charges of uttering a deliberate falsehood.

See Parl. Deb. (1867) 187, c. 953; *ibid.* (1875) 223, c. 1015; *ibid.* (1887) 314, c. 258; *ibid.* (1901) 92, c. 159; H. C. Deb. (1909) 9, c. 215; *ibid.* (1915) 74, c. 1050; *ibid.* (1921) 140, c. 333; *ibid.* (1921) 141, c. 492; *ibid.* (1930-31) 244, c. 1520; *ibid.* (1935-36) 315, c. 836, 845-6.

(*h*) Parl. Deb. (1878) 237, c. 1639; *ibid.* (1878) 238, c. 799; *ibid.* (1897) 46, c. 892; *ibid.* (1908) 190, c. 254; H. C. Deb. (1909) 6, c. 806; *ibid.* (1916) 88, c. 116.

(*i*) H. C. Deb. (1940-41) 371, c. 1294.

(*j*) H. C. Deb. (1936-7) 317, c. 260.

(*k*) Burton, iii. 141, 8 February 1658-9. Mr. Berkeley was called to order, 20 March 1860, for referring to Members by name, as having spoken, in former sessions, against the ballot, Parl. Deb. (1860) 157, c. 939.

(*l*) Parl. Deb. (1884-85) 298, c. 101; *ibid.* (1884-85) 299, c. 1792; *ibid.* (1886) 302, c. 230; *ibid.* (1886) 308, c. 937.

(*m*) C. J. (1890) 72; Parl. Deb. (1890) 341, c. 1570.

The word "calumnious" has generally been held to be in order.

But see Parl. Deb. (1855) 137, c. 1895; *ibid.* (1864) 176, c. 1003; *ibid.* (1867) 186, c. 441; *ibid.* (1870) 201, c. 1455.

#### 4. Abusive and insulting language.

*E.g.* "villains," C. J. (1875) 377, 397; Parl. Deb. (1875) 225, c. 1824; *ibid.* (1875) 226, c. 178; "impertinence," *ibid.* (1876) 230, c. 863; *ibid.* (1907) 181, c. 303, C. J. (1919) 356, H. C. Deb. (1919) 121, c. 487; *ibid.* (1920) 128, c. 1046; "rude remarks," Parl. Deb. (1887) 320, c. 763; *ibid.* (1906) 164, c. 1188; "gross calumny," *ibid.* (1902) 106, c. 1257; "impudence," *ibid.* (1901) 92, c. 968, H. C. Deb. (1922) 152, c. 909; "ruffianism," Parl. Deb. (1901) 99, c. 1065; "hypocrites, pharisees," *ibid.* (1902) 102, c. 1002; *ibid.* (1908) 189, c. 1162; "slanderer," *ibid.* (1906) 164, c. 1254; "murderer," C. J. (1923) 237, H. C. Deb. (1923) 165, c. 2382; *ibid.* (1924) 171, c. 702; "hooligan, blackguard," *ibid.* (1922) 153, c. 1500; "traitor," *ibid.* (1911) 28, c. 1519; *ibid.* (1911) 29, c. 2347; *ibid.* (1915) 72, c. 28; *ibid.* (1918) 107, c. 910; charges of treason, *ibid.* (1917) 96, c. 2482. That a member ought to have been imprisoned for high treason, *ibid.* (1917) 99, c. 345; alleging that a Member's statements were "not consonant with personal honour," *ibid.* (1905) 143, c. 1542; "malignant slander," *ibid.* (1902) 105, c. 579; "scurrilous," *ibid.* (1905) 150, c. 274; "dishonest" *ibid.* (1906) 159, c. 1152, H. C. Deb. (1921) 142, c. 988; "vicious and vulgar," Parl. Deb. (1908) 183, c. 795; "malignant attack," H. C. Deb. (1915) 74, c. 1947; "criminal," Parl. Deb. (1902) 105, c. 1072; "corrupt," *ibid.* (1908) 184, c. 909, 1462. That a member has been "detected in the grossest practices of corruption," *ibid.* (1872) 211, c. 852. Alleging "that a member was returned by the refuse of a large constituency," *ibid.* (1867) 188, c. 1894; "cad or caddishness," H. C. Deb. (1924-25) 185, c. 2728; *ibid.* (1930-31) 251, c. 1262; "pecksniffian cant," *ibid.* (1928) 215, c. 1932; "insulting dog," *ibid.* (1930-31) 245, c. 1655; description of a member's speech as "blether," *ibid.* (1930-31) 253, c. 527; "lie down, dog," *ibid.* (1931-32) 260, c. 1911; "behaving like a jackass," *ibid.* (1933-34) 291, c. 2097; "swine," *ibid.* (1935-36) 313, c. 437.

A charge that a Member has obstructed the business of the House, or that a speech is an abuse of the rules of the House is not out of order (n).

*In the Lords.*—The rules of the House of Lords upon this point are very distinctly laid down in S.O. No. XXVIII, which directs "that all personal, sharp, or taxing speeches be forborn" in the House; and that if any offence be given of that kind, the House "will sharply censure the offender" (o).

#### WORDS OF HEAT

**Lords.**—The Lords, to prevent quarrels in debate between their Members (p), have ordered, by S.O. No. XXIX, that a Lord who conceives himself to have received an affront or injury from another Member within the precincts of the House, shall appeal to the Lords in Parliament for his reparation; or shall, if he declines the justice of

(n) See Parl. Deb. (1886) 308, c. 1170; *ibid.* (1903) 125, c. 945; H. C. Deb. (1909) 6, c. 2046.

(o) Mirror of Parliament, 1833, Vol. III, p. 2855. See also L. J. (1666-75) 31.

(p) Earls of Peterborough and Orford and Earl Rivers, 8 and 9 February 1698, L. J. (1696-1701) 378.

the House, undergo their severe censure. The Lords have extended this principle sometimes to the prevention of quarrels which have arisen out of the House (*q*).

**Commons.**—The House of Commons will insist upon all offensive words being withdrawn, and upon an ample apology being made, which shall satisfy both the House and the Member to whom offence has been given (*r*). If the apology be refused, or if the offended Member decline to express his satisfaction, the House takes immediate measures for preventing the quarrel from being pursued further. In such cases there are precedents for the committal of both the Members to the custody of the Serjeant; whence they have not been released until they have submitted themselves to the House and given assurance against engaging in hostile proceedings (*s*). If words of heat arise in a committee of the whole House, they are reported by the chairman, and the House interposes its authority to restrain any hostile proceedings (*t*).

**Challenges and quarrels.**—The Commons will also interfere to prevent quarrels between Members, arising from personal misunderstanding in a select committee (*u*). The sending of a challenge by one Member to another, in consequence of words spoken by him in his place in Parliament, is a breach of privilege, and is dealt with accordingly, unless a full and ample apology be offered to the House (*v*). It does not appear that the Speaker or the House would interfere to prevent a quarrel from being proceeded with, where it had arisen from a private misunderstanding, and not from words spoken in debate or in any proceedings of the House or of a committee (*b*). In such cases, if any interference should be deemed necessary, information would probably be given to the police.

#### CITING DOCUMENTS NOT BEFORE THE HOUSE

Another rule, or principle of debate, may be here added. A Minister of the Crown is not at liberty to read or quote from a despatch or other state paper not before the House, unless he be prepared to lay it upon the table. This restraint is similar to the rule of evidence in courts of law, which prevents counsel from citing documents which have not been produced in evidence. The principle is so reasonable that it

(*q*) L. J. (1779-83) 188-91.

(*r*) C. J. (1823) 224; *ibid.* (1841) 401; *ibid.* (1847-48) 442, 443; *ibid.* (1852) 143; *ibid.* (1862) 64; Parl. Deb. (1862) 165, c. 617; *ibid.* (1862) 167, c. 854; *ibid.* (1866) 183, c. 801.

(*s*) C. J. (1834) 9, 11; *ibid.* (1836) 484, 485; *ibid.* (1837) 270; *ibid.* (1837-38) 657, 660. MS. Officers and Usages of the House of Commons, 1805, p. 138.

(*t*) C. J. (1851-52) 313.

(*u*) C. J. (1836) 464, 468; Parl. Deb. (1836) 34, c. 410, 486.

(*v*) Case of Mr. Roebuck and Mr. Somers, 16 June 1845, C. J. (1845) 589; Parl. Deb. (1845) 81, c. 601. Notice taken of a challenge sent to a member, on remarks made outside the House, which touched proceedings in the House, 31 May 1883, C. J. (1883) 232. In 1798, the Speaker did not interfere to prevent the duel between Mr. Pitt and Mr. Tierney: but went to Putney, where it was fought, Sidmouth, i. 204, 206.

(*b*) Private memorandum, 22 February 1849. But see C. J. (1699-1702) 444; also case where offensive language had been used, in the division lobby, concerning a speech delivered at a public meeting, *ibid.* (1867) 221.

has not been contested; and when the objection has been made in time, it has been generally acquiesced in. It has also been admitted that a document which has been cited ought to be laid upon the table of the House, if it can be done without injury to the public interests (*c*). A Minister who summarizes a correspondence, but does not actually quote from it, is not bound to lay it upon the table (*d*). The same rule, however, cannot be held to apply to private letters or memoranda.

On 18 May 1865, the attorney-general, on being asked by Mr. Ferrand if he would lay upon the table a written statement and a letter to which he had referred on a previous day, in answering a question relative to the Leeds Bankruptcy Court, replied that he had made a statement to the House upon his own responsibility, and that, the documents he had referred to being private, he could not lay them upon the table. Lord Robert Cecil contended that the papers, having been cited, should be produced; but the Speaker declared that this rule applied to public documents only (*e*). On 10 August 1893, the Speaker ruled that confidential documents or documents of a private nature passing between officers of a department and the department, cited in debate, are not necessarily laid on the table of the House, especially if the Minister declares that they are of a confidential nature (*f*). Indeed, it is obvious that, as the House deals only with public documents in its proceedings, it could not thus incidentally require the production of papers which, if moved for separately, would be refused as beyond its jurisdiction.

Members not connected with the Government have also cited documents in their possession, both public and private (*g*), which were not before the House: but though the House is equally unable to form a correct judgment from partial extracts, inconvenient latitude has sometimes been permitted, which it is doubtful whether any rule but that of good taste could have restrained.

**Law officers' opinions.**—The opinions of the law officers of the Crown, being confidential, are not usually laid before Parliament or cited in debate; and their production has frequently been refused: but if a Minister deems it expedient that such opinions should be made

(*c*) See motion of Mr. Adam, 4 March 1808, to censure Mr. Canning for having read to the House despatches and parts of despatches, none of which had then been communicated to the House, and some of which the House had determined should not be produced, *Parl. Deb.* (1808) 10, c. 898, Colchester, *ii.* 141. Mr. Canning and Mr. Tierney, 11 February 1818, *ibid.* (1818) 37, c. 393. Debate in committee of supply, 17 July 1857 (Sir C. Wood), *Parl. Deb.* (1857) 146, c. 1759. See debate, 23 May 1862, on the Longford Election, in which Sir Robert Peel referred to information received by the Government without citing documents; and comments made upon this course, and precedents cited, *ibid.* (1862) 166, c. 2128–31. Also statement of rule by Viscount Palmerston, 12 May 1863, *ibid.* (1863) 170, c. 1585, and *ibid.* (1864) 176, c. 962; *ibid.* (1865) 179, c. 489; *ibid.* (1877) 235, c. 935; *ibid.* (1887) 319, c. 1859, 1869; *ibid.* (1889) 336, c. 651. *H. C. Deb.* (1913) 54, c. 2345. See also debate, 11 March 1903, when a Minister quoted the evidence given before a military court of inquiry, and the Speaker's statement, 16 March, that the rule of debate had been complied with by laying upon the table the evidence of the witness quoted, *Parl. Deb.* (1903) 119, c. 501, 570, 858.

(*d*) *Parl. Deb.* (1905) 151, c. 814.

(*e*) *Parl. Deb.* (1865) 179, c. 489; see also *ibid.* (1883) 282, c. 2108; *H. C. Deb.* (1941–2) 376, c. 2194.

(*f*) *Parl. Deb.* (1893) 15, c. 1778.

(*g*) *Parl. Deb.* (1855) 137, c. 261; *ibid.* (1883) 280, c. 250.

known for the information of the House, he is entitled to cite them in debate (*h*).

### 3. RULES OF BEHAVIOUR FOR MEMBERS NOT SPEAKING

The rules to be observed by Members present in the House during a debate are to keep their places ; to enter or leave the House with decorum ; not to cross the House irregularly ; not to read books, newspapers, or letters ; to maintain silence ; not to hiss or interrupt.

The practice of smoking during any of the proceedings of the House is forbidden. For the order, "That no member do presume to take tobacco in the gallery of the House or at a committee table," see C. J. (1693-97) 137; H. C. Deb. (1919) 117, c. 846; in the lobbies and corridors, *ibid.* (1928) 215, c. 348, and the division lobbies, *ibid.* (1927) 209, c. 1469. As to smoking in committees, see *ibid.* (1919) 116, c. 46.

#### MEMBERS TO KEEP THEIR PLACES

**Lords.**—By S.O. No. XIX the Lords are directed to keep their dignity and order in sitting, and not to move out of their places without just cause ; and that when they cross the House, they are to make obeisance to the cloth of estate.

**Commons.**—By the resolutions of 10 February 1698 and 16 February 1720, members of the House of Commons are ordered to keep their places, and not walk about the house, or stand at the bar or in the passages (*i*). If, after a call to order, Members who are standing at the bar or elsewhere do not disperse, the Speaker orders them to take their places ; when it becomes the duty of the Serjeant-at-Arms to clear the gangway and to enforce the order of the Speaker, by desiring those Members who still obstruct the passage immediately to take their places (see p. 221). If they refuse or neglect to comply, or oppose the Serjeant in the execution of his duty, he may report their names to Mr. Speaker. Members who enter or leave the House during a debate must be uncovered and should make an obeisance to the Chair while passing to or from their places (*j*).

#### CROSSING BEFORE MEMBERS SPEAKING

In the Lords it has been seen that care should be taken in the manner of crossing the House, and it is especially irregular to pass between the woolsack and any Peer who is addressing their lordships, or between the woolsack and the table. In the Commons, Members are not to cross between the Chair and a Member who is speaking from either of the two lower benches, or between the Chair and the table, or between the Chair and the mace, when the mace is taken off the table by the

(*h*) Parl. Deb. (1865) 177, c. 354, 355.

(*i*) C. J. (1697-99) 496 ; *ibid.* (1718-21) 425.

(*j*) D'Ewes, 282 ; 2 Hatsell, 232, *n*.



Serjeant. When they cross the House, or otherwise leave their places, they should make obeisance to the Chair.

#### READING OF BOOKS, ETC.

Members are not to read books, newspapers or letters in their places (*k*). This rule, however, must now be understood with some limitations ; for although it is still irregular to read newspapers, any books and letters may be referred to by Members preparing to speak, but ought not to be read for amusement or for business unconnected with the debate.

#### SILENCE

Silence is required to be observed in both Houses. In the **Lords** it is ordered, by S.O. No. XXIV,

“ If any lord has occasion to speak with another lord while the house is sitting, they are to retire to the Prince’s Chamber, and not converse in the space behind the woosack, or else the Lord Speaker is to call them to order, and, if necessary, to stop the business in agitation.”

In the **Commons**, all Members should be silent, or should converse only in undertones (*l*). Whenever the conversation is so loud as to make it difficult to hear the debate, the Speaker calls the House to order.

On 5 May 1641, it was resolved : “ That if any man shall whisper or stir out of his place to the disturbance of the House at any message or business of importance, Mr. Speaker is ordered to *present his name* to the House, for the House to proceed against him as they shall think fit.” C. J. (1640-42) 135.

#### HISSING OR INTERRUPTION

Members are not to disturb a Member who is speaking, by hissing, exclamations or other interruption ; and the resolution of the House, 22 January 1693, enjoins “ that Mr. Speaker do call upon the Member by name, making such disturbance, and that every such person shall incur the displeasure and censure of the House ” (*m*). This rule is too often disregarded. In the House of Commons, disorderly noises are sometimes made, which, from the fulness of the House, and the general uproar maintained when five or six hundred Members are impatiently waiting for a division, it is scarcely possible to repress.

On 19 March 1872, while strangers were excluded, notice was taken of the crowing of cocks, and other disorderly noises, proceeding from Members, principally behind the chair ; and the Speaker condemned them as gross violations of the orders of the House and expressed the pain with which he had heard them (*n*).

Cries of “ hear, hear,” etc.—There are words of interruption which, if used in moderation, are not unparliamentary, but when frequent and loud, cause serious disorder ; such as the cries of “

(*k*) C. J. (1644-46) 51.

(*l*) H. C. Deb. (1933-34) 399, c. 1153.

(*m*) C. J. (1547-1628) 152, 473 ; see also motions against hissing, etc., 1604, *ibid.* 243, 935 ; *ibid.* (1693-97) 66.

(*n*) Parl. Deb. (1872) 210, c. 307.

"question," "order, order," "hear, hear," or "divide, divide," which have been sanctioned by long parliamentary usage in both Houses. When intended to denote approbation of the sentiments expressed, and not uttered till the end of a sentence, the cry of "hear, hear," offers no interruption to the speech. The same words may be used for very different purposes, and instead of implying approbation, they may express dissent, derision or contempt. Whenever exclamations of this kind are obviously intended to interrupt a speech, the Speaker calls the House to order, and, if the cries are persisted in, he names the disorderly members or directs them to withdraw from the House (see p. 441). If the interruption should be so continuous and prolonged as to constitute a state of grave disorder (o) the Speaker puts in force S.O. No. 20 (see p. 442).

**Cry of "shame."**—A gross form of interruption, by loud cries of "shame," has been strongly condemned by the Speaker, who declared his intention to take notice of the committal of the offence (p).

#### 4. POWERS OF THE CHAIR TO ENFORCE ORDER

The disciplinary powers of the Speaker in the Lords and Commons respectively are very different. In the Lords they may be said to be non-existent, no such powers having been delegated to the Lord Speaker by the House. In the Commons the Speaker possesses certain general powers under ancient usage, and he has been armed by modern standing orders with precisely defined summary powers which largely supersede those exercised both by the Speaker and the House itself under the ancient practice. Apart from the next paragraph which states the position in the Lords, the whole of this section is concerned with procedure in the Commons.

##### AUTHORITY OF SPEAKER IN MATTERS OF ORDER

**Lords.**—In the enforcement of all these rules for maintaining order, the Speaker of the House of Lords has no more authority than any other Peer, except in so far as his own personal weight and the dignity of his office may give effect to his opinions and secure the concurrence of the House. The result of his imperfect powers is that a Peer who is disorderly is called to order by another Peer, perhaps of an opposite party; and that an irregular argument is liable to ensue, in which each speaker imputes disorder to the last and recrimination takes the place of orderly debate. There is no impartial authority to whom an appeal can be made, and the debate upon a question of order generally ends with satisfaction to neither party, and without any decision upon the matter to which exception had been taken.

**Commons.**—In so large and active an assembly as the House of Commons, it is absolutely necessary that the Speaker should be invested with authority to repress disorder and to give effect, promptly and

(o) H. C. Deb. (1912) 43, c. 2054; *ibid.* 44, c. 33; *ibid.* (1923) 162, c. 1265.

(p) Parl. Deb. (1887) 310, c. 166; *ibid.* (1893) 12, c. 731, 790; *ibid.* (1893) 14, c. 469.

decisively, to the rules and orders of the House. The ultimate authority upon all points is the House itself: but the Speaker is the executive officer by whom its rules are enforced. In ordinary cases the breach of order is obvious and is immediately checked by the Speaker; in other cases, if his attention is directed to a breach of order at the proper moment, namely, the moment when it occurred (*q*), he at once gives his decision and if he fails to secure the compliance of the Member in fault directs him to withdraw or names him and leaves it to the House to inflict the appropriate penalty (see p. 103). In doubtful cases, and in cases not provided for by practice or the standing orders, the Speaker refers the matter to the judgment of the House (see p. 439).

#### DUAL SOURCE OF MODERN POWER TO PUNISH DISORDER

The power to punish disorder is regulated partly by practice and partly by standing order (Nos. 17 and 19). Paragraph (6) of S.O. No. 17 expressly saves the "ancient usages" of the House in "proceeding against Members." The change introduced by standing order may be described briefly as giving the Chair power to deal with minor offences, but as leaving punishment to the House, while making its infliction more certain and immediate.

#### DISCIPLINARY POWERS OF SPEAKER UNDER ANCIENT USAGE

The ancient usage has been so modified by recent standing orders, which cover the majority of cases likely to arise, as to be largely inapplicable. It is necessary, however, to state it briefly here, because the existing standing order procedure is most easily understood by reference to the practice which it has modified, and also because it is still open to the House to proceed against a Member according to ancient usages in preference to relying upon the powers conferred by standing order.

The chief features of the ancient practice were:—

- (1) the duty of the Chair to call a Member to order and require the withdrawal of offensive words, etc., coupled with the right of any Member to draw the attention of the Chair to breaches of order;
- (2) the power of the Chair to name a Member for the purpose of referring his actions to the judgment of the House; and
- (3) the right of a Member to move that offensive words be taken down with a view to appropriate action being taken.

When any Member infringed usage or the rules it was the duty of the Speaker to call the offending Member to order and, if he had made use of any language which the Chair deemed unparliamentary, to require him to explain or retract the words and apologize to the House for having used them. It was also the right of any Member who conceived that a breach of order had been committed, if the Speaker did not intervene, either because he had not perceived the breach of order or for any other reason, to rise to order and

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(*q*) Parl. Deb. (1872) 210, c. 534; *ibid.* (1879) 247, c. 325. See also Denison, 42.

direct the attention of the Chair to the matter. When the attention of the Chair was thus drawn to a supposed breach of order, the Speaker, if he thought that the language or behaviour impugned was disorderly, proceeded in the same manner as when he interfered upon his own motion. If a Member persisted in a disorderly course of behaviour despite repeated admonitions from the Chair, or refused to retract disorderly words when called upon to do so by the Speaker, it became the duty of the Speaker to name the refractory Member to the House. Save when a Member was named for persisting in disorderly interruptions, in which event he was immediately directed to withdraw (*r*), the Member whose conduct was thus referred to the judgment of the House, was heard in his place, if he so desired and was then required to withdraw. If a Member neglected or refused to withdraw, the House, upon motion, ordered him to withdraw (*s*). But a Member, whose conduct was not directly impugned by the form of the question, was permitted to continue in the House and vote (*t*). When the Member had withdrawn, the House either proceeded to consider what punishment should be inflicted on him (*u*), or deferred consideration of his conduct to a subsequent day (*a*). In the latter event the Member was ordered to attend in his place on the day on which his conduct was to be taken into consideration. The punishments inflicted for disorderly conduct were censure (*b*), suspension from the service of the House (*c*), committal to the custody of the Serjeant-at-Arms (*d*), or to one of His Majesty's prisons (*e*), or expulsion from the House (*f*). When a Member had been adjudged guilty of a contempt of the House he was not allowed to take his place at a subsequent sitting, if some delay had occurred in agreeing to a further motion for his suspension or committal. When the House was moved to take action with regard to the conduct of a Member who had been named, the motion was open to debate and to amendment.

*Words taken down.*—When disorderly words are used by a Member in debate, notice should be immediately taken of the words objected to (*g*); and if a Member desires that the words be taken down, he must repeat the words to which he objects, and state them to the House exactly as he conceives them to have been spoken. Then the Speaker or the Chairman, if in his opinion the words are disorderly (*h*), or having ascertained the sense of the House or the committee, directs the Clerk to take down the words to which objection has been taken (*i*). Even the Speaker's own words have been taken down (*j*). The Commons have agreed "that when any member had spoke between, no words which had

(*r*) Mr. Whitmore's case, C. J. (1792-93) 13, 30 Parl. Hist. 113; Major O'Gorman's case, C. J. (1878) 406, Parl. Deb. (1878) 242, c. 1380.

(*s*) Sir William Wyndham's case, C. J. (1714-18) 49.

(*t*) Mr. Stansfeld's case, Parl. Deb. (1864) 174, c. 340.

(*u*) Mr. Whitmore's case, *ubi supra*.

(*a*) Mr. Plimsoll's case, C. J. (1875) 377, Parl. Deb. (1875) 225, cc. 1825-26; Major O'Gorman's case, *ubi supra*.

(*b*) Sir William Wyndham's case, C. J. (1714-18) 54.

(*c*) Mr. Hollis's case, C. J. (1640-42) 128.

(*d*) Mr. Feargus O'Connor's case, C. J. (1852) 278.

(*e*) Mr. Shippen's case, C. J. (1714-18), 653.

(*f*) Mr. Bradlaugh's case, C. J. (1882) 61-2.

(*g*) Parl. Deb. (1862) 165, c. 622; *ibid.* (1882) 268, c. 198.

(*h*) Regarding the Speaker's discretion in giving the direction, see 2 Hatsell, 272, *n.*; also Parl. Deb. (1851) 115, c. 276; *ibid.* (1877) 235, c. 1806.

(*i*) 2 Hatsell, 269; C. J. (1810-11) 391; *ibid.* (1812-13) 322; *ibid.* (1877) 375; *ibid.* (1878-79) 316; Parl. Deb. (1879) 247, c. 1382; C. J. (1882) 253, 395; Parl. Deb. (1882) 270, c. 365; *ibid.* (1882) 272, c. 1563. Such words are entered in the Journal and the Votes and Proceedings:

(*j*) 16 February 1770, 1 Cav. Deb. 463.

passed before could be taken notice of, so as to be written down in order to a censure" (*k*). On 9 April 1807, the Speaker decided that certain words could not be taken down, though a Member had immediately risen to order and objected to the words used, because another Member and the Speaker had spoken to the question of order, before the House expressed a wish to have the words taken down (*l*). When objection was taken to words, after a question put from the chair, it was ruled to be too late (*m*). This rule applies, if the Member is permitted to continue his speech without interruption; and in the Lords, also, the words are required to be taken down *instantly* (*n*). If the words be taken down in a committee of the whole House, they are reported forthwith, to be dealt with by the House (*o*). Failing the tender of explanation or apology, the consideration of the matter is appointed for the next sitting, and the Member incriminated is ordered to attend. Immediate complaint to the Chair is, however, the most effective mode of dealing with offensive words.

#### DISCIPLINARY POWERS UNDER STANDING ORDER

The entrusting to the Chair of summary and expeditious powers of dealing with disorder, as a means of re-inforcing the ancient and more formal but more leisurely usage of the House, constituted an important part of the reform of procedure by standing order which is referred to earlier in this chapter (p. 438). The relevant standing orders for the present purpose are Nos. 17 to 20. S.Os. Nos. 17, 18, and 19 were passed in the eighties of last century, and S.O. No. 20 in 1902. With subsequent amendments, and as interpreted in the light of practice, they provide a graduated code of punishments for infringements of the rules for the conduct of debate and for breaches of order and decorum, which has been found adequate to deal with all the cases which ordinarily arise. Offences and the appropriate methods of dealing with them may be classified as follows :—

- (1) Irrelevance ;
- (2) Minor breaches of order ;
- (3) The use of disorderly or unparliamentary expressions ;
- (4) Grossly disorderly conduct ;
- (5) Grave disorder, and
- (6) Obstruction of the business of the House otherwise than by disorderly conduct or persistence in irrelevance.

(1) **Irrelevance.**—If any Member wanders from the question under discussion, the Speaker interrupts him and reminds him that he must speak to the question. If a Member persists in irrelevance, S.O. No. 18 empowers the Speaker, after calling the attention of the House to the

(*k*) 2 Hatsell, 269, *n*.

(*l*) Parl. Deb. (1807) 9, c. 326.

(*m*) Parl. Deb. (1871) 205, c. 403.

(*n*) Parl. Deb. (1839) 48, c. 321.

(*o*) Case of Mr. More, 3 June 1626, C. J. (1547–1628) 866 ; of Mr. Shippen, 4 December 1717, *ibid.* (1714–18) 653 ; *ibid.* (1852–53) 461, 466 ; *ibid.* (1877) 375, Parl. Deb. (1877) 235, c. 1810 ; C. J. (1878–79) 316 ; C. J. (1893–94) 469.

Member's conduct, to direct him to discontinue his speech (*p*). If he refuses to obey the direction of the Chair, the Speaker either directs him under S.O. No. 19 to withdraw from the House for the remainder of the sitting (*q*), or names him for disregarding the authority of the Chair (*r*).

(2) **Minor Breaches of Order.**—When any Member transgresses the rules of debate, otherwise than by using disorderly or unparliamentary expressions, or makes any noise or disturbance whilst another Member is speaking, or commits any other breach of order or decorum not amounting to grossly disorderly conduct (see p. 442), it is the duty of the Speaker, if in his judgment the occasion demands it, to interfere and call the Member offending to order. If he persists in his disorderly conduct it becomes the duty of the Speaker, in pursuance of S.O. No. 19, to direct the refractory Member to withdraw from the House for the remainder of the sitting, or, if he thinks that the authority of the Chair and the dignity of the House would not be sufficiently vindicated by excluding the offender from the House for the remainder of the sitting, to name him for disregarding the authority of the Chair, or to call upon the House to adjudge his conduct.

If a Member who has been ordered to withdraw from the House does not immediately obey, the Speaker or the Chairman, as the case may be, may either direct the Serjeant-at-Arms to remove him (*s*), or name the contumacious Member to the House or Committee (*t*).

When attention was drawn to the fact that a Member who had been directed to withdraw from the House had not withdrawn, the Chair reminded the Member of the direction that had been given him, and on the Member refusing to withdraw, named him for disregarding the authority of the Chair, C. J. (1913) 37; H. C. Deb. (1913) 50, c. 1695.

(3) **The use of disorderly or unparliamentary words.**—Where any disorderly or unparliamentary words are used, whether by a Member who is addressing the House or by a Member who is present during a debate, the Speaker intervenes and calls upon the offending Member to withdraw the words. If the Member does not explain the sense in which he used the words so as to remove the objection of their being disorderly, or retract the offensive expressions and make a sufficient apology for using them, the Speaker repeats the call for explanation, and informs the Member that if he does not immediately respond to it, it will become the duty of the Chair to take one or other of the steps which are about to be described. If the Member still refuses the Speaker either (1) in pursuance of S.O. No. 19 directs the refractory Member to withdraw from the House for the remainder of the sitting (*u*), or (2) names him to the House for disregarding the authority of the Chair (*a*).

(*p*) e.g. C. J. (1933-34) 334.

(*q*) C. J. (1897) 265; *ibid.* (1898) 96.

(*r*) C. J. (1897) 264.

(*s*) C. J. (1896) 242; *ibid.* (1897) 265.

(*t*) C. J. (1923) 156, 237; *ibid.* (1924-25) 102; *ibid.* (1926) 60, 327; *ibid.* (1927) 218, 340, 341.

(*u*) C. J. (1932-33) 68.

(*a*) C. J. (1935-36) 342.

(4) **Grossly disorderly conduct.**—To prevent any Member being taken unawares it is usual for the Speaker or the Chairman repeatedly to warn any Member who may be transgressing the rules of debate or otherwise conducting himself in a disorderly manner, before ordering him to withdraw from the House or naming him. When, however, a Member conducts himself in a grossly disorderly manner the Speaker is enjoined by S.O. No. 19, instead of merely calling the offender to order, forthwith to order him to withdraw from the House, or, if he thinks the authority and dignity of the House would not be sufficiently vindicated by excluding the offender from the House for the remainder of the sitting, either to name him or to call upon the House to adjudge upon his conduct.

Thus, when, after the Prime Minister had replied to a question regarding the treatment of certain political offenders, a Member left his seat below the gangway, and, walking to the end of the ministerial bench above the gangway, addressed the Prime Minister in grossly discourteous terms, the Speaker at once ordered him to withdraw from the House, H. C. Deb. (1912-13) 40, cc. 217-18.

Again, a Member who used insulting language to the Speaker from beyond the bar or to the Chairman during the progress of a division, and a Member who seized the mace and carried it away from the table, have been named for grossly disorderly conduct, H. C. Deb. (1937-8) 328, c. 1773, C. J. (1900) 380; H. C. Deb. (1929-30) 241, c. 1465.

(5) **Grave disorder.**—In the event of grave disorder arising in the House, the Speaker is empowered by S.O. No. 20, if he thinks it advisable, to adjourn the House without question put (*b*), or to suspend the sitting for a time to be named by him (*c*). (See also p. 310).

(6) **Obstruction of the business of the House otherwise than by disorderly conduct.**—A Member who "abuses the rules of the House by persistently and wilfully obstructing the business of the House," that is to say, who, without actually transgressing any of the rules of debate, uses his right of speech for the purpose of obstructing the business of the House, or obstructs the business of the House by misusing the forms of the House, is technically not guilty of disorderly conduct (*d*). It would seem, therefore, that a Member so obstructing the business of the House cannot be required under S.O. No. 19 to withdraw from the House for the remainder of the sitting. He is, however, guilty of a contempt of the House (*e*), and may be named.

Comparatively little use has been made by the Chair of the power of naming a Member who obstructs the business of the House by misusing the forms of the House (*f*). Where obstruction takes the form of persistence in tedious repetition by a Member either of his own arguments or of the arguments used by other Members in debate, S.O. No. 18

(*b*) C. J. (1905) 202; *ibid.* (1911) 351; *ibid.* (1914) 237; *ibid.* (1924) 178; *ibid.* (1926) 232.

(*c*) C. J. (1920) 436, H. C. Deb. (1920) 135, c. 39.

(*d*) Mr. Speaker Brand's evidence, Select Committee on Public Business, H. C. 268, p. 142, Q. 1381 (1878); Parl. Deb. (1881) 257, c. 1944.

(*e*) C. J. (1877) 375.

(*f*) For instances of the exercise of the power, see C. J. (1882) 322; *ibid.* (1901) 62; *ibid.* (1926) 116.

empowers the Chair, after calling the attention of the House or the Committee to the Member's conduct, to direct him to discontinue his speech. If he refuses to obey the direction of the Chair the Speaker or the Chairman either directs him to withdraw from the House for the remainder of the sitting (*g*), or names him for disregarding the authority of the Chair (*h*).

Effective restraints upon other forms of obstruction are provided by the powers of the Chair to accept a motion for the closure of the debate (S.O. No. 26), to put the question upon a dilatory motion forthwith or to decline to propose the question on such a motion (S.O. No. 22), to select the amendments to be proposed to any bill or motion (S.O. No. 28), and, where a division is unnecessarily claimed, to take the vote of the House or Committee by calling upon the Members who support, and who challenge his decision, successively to rise in their places (S.O. No. 31).

#### RIGHT OF MEMBERS TO DIRECT THE ATTENTION OF THE CHAIR TO SUPPOSED BREACHES OF ORDER

Although it is the duty of the Speaker to interfere in the first instance for the preservation of order when, in his judgment, the occasion demands his interference, it is also the right of any Member who conceives that a breach of order has been committed, if the Speaker refrains from interfering (either because he does not consider it necessary to do so, or because he does not perceive that a breach of order has been committed) to rise in his place, interrupting any Member who may be speaking, and direct the attention of the Chair to the matter, provided he does so the moment the alleged breach of order occurs (*i*). When a Member speaks to order he must simply direct attention to the point complained of, and submit it to the decision of the Speaker. When the attention of the Speaker is thus called to a supposed breach of order, he at once gives his decision and if, in his opinion the Member whose words or conduct are complained of is disorderly, calls upon him to conform to the rules of the House. Doubtful cases may arise upon which the rules of the House are indistinct or obsolete or do not apply directly to the point at issue; when the Speaker, being left without specific directions, refers the matter to the judgment of the House (*j*).

**Procedure when the Speaker rises.**—Whenever the Speaker rises to interpose in the course of a debate, he is to be heard in silence (*k*), and any Member who is speaking or offering to speak should immediately sit down, nor should Members leave their seats while the Speaker is addressing the House (*l*); and Members who do not maintain silence, or who attempt to address the Speaker, are called to order by the majority of the House with loud cries of "order" and "chair." A

(*g*) C. J. (1897) 265; *ibid.* (1898) 96.

(*h*) C. J. (1897) 264.

(*i*) Parl. Deb. (1872) 210, c. 534; *ibid.* (1878-79) 247, c. 325. See also Denison, 42.

(*j*) Parl. Deb. (1806) 6, c. 847; *ibid.* (1807) 7, c. 208.

(*k*) C. J. (1804) 244.

(*l*) Parl. Deb. (1897) 49, c. 122.



Member who persists in standing after the Speaker has risen and refuses to resume his seat when directed by the Chair to do so may be either directed to withdraw from the House for the remainder of the sitting or named for disregarding the authority of the Chair (*m*).

#### PROCEEDINGS UPON THE NAMING OF A MEMBER

A standing order passed on 28 February 1880, and amended on 22 November 1882, provides that when a Member is named by the Speaker for grossly disorderly conduct, disregarding the authority of the Chair or abusing the rules of the House by persistently and wilfully obstructing the business of the House or otherwise, a motion may be made "That such Member be suspended from the service of the House," upon which the Speaker forthwith puts the question, no amendment, adjournment or debate being allowed.

When a Member is named by the Chairman to a Committee of the whole House, the Chairman forthwith suspends the proceedings of the Committee and reports the circumstances to the House; and the Speaker, on a motion being made for the suspension of the offending Member from the service of the House puts the question, without amendment, adjournment or debate, as if the offence had been committed in the House itself.

Proceedings on a motion for the suspension of a Member under S.O. No. 17 are exempt from interruption under S.O. No. 1 (*n*).

One Member only may be named at a time unless several Members, present together, have jointly disregarded the authority of the Chair (*o*).

Under the standing order as amended on 30 March 1926, suspension continues on the first occasion until the fifth day on which the House sits after the day on which the Member was suspended (*p*); on the second occasion until the twentieth day; and on any subsequent occasion until the House orders that the suspension of the Member shall terminate or, in default of such order, for the remainder of the session. The first (or subsequent) occasion has been interpreted to mean the first or subsequent occasion in the same session.

A Member who is suspended from the service of the House under this order must forthwith withdraw from the House. If he does not withdraw the Speaker directs him to do so. If he does not comply with the direction, the Speaker orders the Serjeant-at-Arms to summon the Member to obey the Speaker's direction. If he still refuses to obey, the Speaker calls the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his direction, and

(*m*) H. C. Deb. (1923) 165, c. 2395.

(*n*) Parl. Deb. (1902) 103, c. 237.

(*o*) For an instance of several Members being named at the same time, see C. J. (1926) 117.

(*p*) Between 1902 and 1926 no period was assigned by the standing order, and suspension therefore continued until the end of the session unless sooner terminated by the House. C. J. (1902) 130, *ibid.* (1912-13) 349; *ibid.* (1913) 75; *ibid.* (1916) 211; *ibid.* (1920) 395; *ibid.* (1923) 176, 321. Although a motion to rescind or terminate the suspension of a Member is not entitled to priority as a question of privilege, the Speaker has accorded priority to such a motion when it appeared that the Member had been named in error for disregarding the authority of the Chair, Parl. Deb. (1901) 90, cc. 699, 831.

directs the Serjeant to remove the refractory Member. The standing order provides that in such a case the Member shall thereupon, without any further question being put, be suspended from the service of the House for the remainder of the session.

Where the Speaker has directed the Serjeant to cause a Member who had been suspended but refused to leave the House to be removed from the House, he has suspended the sitting until the Member should have been removed, C. J. (1916) 155; H. C. Deb. (1916) 84, c. 1861; C. J. (1917-18) 171; *ibid.* (1918) 141; H. C. Deb. (1918) 107, c. 1410, C. J. (1930-31) 333.

On 2 July 1931, a Member persisted in disregarding the authority of the Chair, whereupon the Speaker named him and he was suspended on the motion of the Prime Minister. The Speaker then directed the Member to withdraw, but he refused to comply. Accordingly the Speaker directed the Serjeant-at-Arms to remove him. The Serjeant-at-Arms, finding that force was necessary, brought in his officers, who in their attempts to remove the Member were resisted not only by that Member but by certain other Members. The Member who had been suspended was eventually removed. While this was taking place, the Speaker announced that grave disorder had arisen and suspended the sitting. After an interval of a quarter of an hour the Speaker resumed the chair, and informed the House that, resort to force having been necessary to remove the Member, he was therefore suspended from the service of the House for the remainder of the session (S.O. No. 17 (5)).

The next day, the Speaker read to the House a report which he had received from the Serjeant-at-Arms to the effect that his officers, when carrying out the Speaker's instructions, were obstructed by certain Members. The Chancellor of the Exchequer, on behalf of the Prime Minister who was absent, stated that the Prime Minister proposed to draw the attention of the House to the report and to ask that appropriate action be taken.

On 6 July after the conclusion of Questions, the Members concerned expressed deep regret for the incident, and the Prime Minister acknowledged the expressions of regret and suggested that they should be accepted by the House. The House ordered that the proceedings be entered on the Journals, C. J. (1930-31) 333, 335, 338.

### Suspension, withdrawal and exclusion from precincts.—

Members ordered to withdraw from the House in pursuance of S.O. No. 19 or suspended from the service of the House in pursuance of S.O. No. 17, must withdraw forthwith from the precincts of the House that is, from the area within the walls of the Palace of Westminster (q). A Member suspended from the service of the House on a motion not made pursuant to S.O. No. 17 is not excluded from the precincts of the House unless the order for his suspension expressly provides therefor (r).

Suspension from the service of the House does not, however, exempt a Member from serving on any committee for the consideration of a private bill to which he has been appointed before his suspension (S.O. No. 17 (3)).

Notices standing in the name of a suspended Member are removed

(q) Select Committee on Privilege (Service of a Summons on a Member in the Outer Lobby), H. C. 411, p. 64, Q. 1164 (1888); H. C. Deb. (1916) 85, c. 1426.

(r) C. J. (1890-91) 481.

from the notice paper of each day, as it is made out, as long as his suspension lasts (*s*). No motion can be made that a suspended Member be heard at the bar (*t*).

**Restriction of ancient usage by S.Os. Nos. 17 and 19.**—S.O. No. 17 (6) provides that nothing therein shall be taken to deprive the House of the power of proceeding against any Member according to ancient usages. It might be supposed, therefore, that when a Member has been named, it would be competent for any Member to move that any penalty which it is within the power of the House to inflict, other than the penalty prescribed by the standing orders should be imposed upon the offending Member, or that his conduct should be taken into consideration upon a future day. The provision in question must, however, be read in conjunction with S.O. No. 19 which distinguishes between the naming of an offending Member by the Chair in pursuance of S.O. No. 17 and "calling upon the House to adjudge the conduct of such a Member." The inference from this is that when a Member has been named for committing any of the offences pointed out in S.Os. Nos. 17 and 19, the only penalty which can be inflicted is that of suspension from the service of the House for the period prescribed by S.O. No. 17.

Since the distinction between naming a disorderly Member and calling upon the House to adjudge the conduct of such a Member was introduced in 1888 by what is now S.O. No. 19, no occasion has arisen for the exercise by the Chair of the latter power. If, on any occasion, the Speaker, instead of naming a Member, was to call upon the House to adjudge his conduct, the procedure would be the same as the procedure under the ancient usage of the House when a Member was named by the Speaker (see pp. 438-9).

#### MISBEHAVIOUR IN THE LOBBIES

A Member cannot be named unless the offence is committed in the House, or a Committee of the whole House, in the actual view of the Chair and is dealt with at once. Misbehaviour in the lobbies, such as the use of offensive expressions (*u*) or insulting words (*a*) or threats (*b*), is accordingly left to the House to be dealt with under the ancient practice as a contempt. But action in a division lobby which obstructs the proceedings of the House, such as the indefinite prolongation of a division by the refusal of certain Members to pass the tellers, has been punished under S.O. No. 17 by naming, after the Chairman had directed the Serjeant to ascertain the names of the Members concerned (*c*).

(*s*) Parl. Deb. (1901) 90, c. 1048.

(*t*) Parl. Deb. (1887) 313, c. 1126-28.

(*u*) C. J. (1877) 144, Parl. Deb. (1877) 233, c. 951.

(*a*) C. J. (1887) 377, Parl. Deb. (1887) 317, c. 1167.

(*b*) Parl. Deb. (1881) 263, c. 50.

(*c*) C. J. (1926) 117.

## CHAPTER XIX

### METHODS OF CURTAILING DEBATE

The principal methods available for the curtailment of debate on particular items of business in the House of Commons are the following :—

1. The closure of debate (of which there are two principal forms (i) the ordinary closure, (ii) closure on the words of a clause).
2. The selection of amendments.
3. The allocation by Orders of limits of time for discussion.

These methods are described in detail in this chapter. It will be convenient first to state briefly and in general terms the machinery and effect of these methods and the purposes for which they are employed.

#### OBSTRUCTION BY PROLONGATION OF DEBATE

All these methods were originally designed to counteract the diversion of the ordinary forms of procedure to the purpose of prolonging debate, and so obstructing the progress of business. They are probably a permanent feature of modern procedure, but they are still felt to be an unfortunate necessity and not to be justified except against obstruction or by pressure of business. This is especially true of the first and third of these methods, the employment of which has become decreasingly frequent in the last twenty years. It is not so true of the method of selection of amendments, for, as will be shown later, the impartial use of this discretionary power has a recognized value even under ordinary conditions of debate.

The difference in the machinery by which these time-saving methods are put into operation make them applicable to different kinds of business. The ordinary closure, which ends a debate by securing the immediate putting of the question under discussion, can be initiated by a single Member, but requires that not less than a hundred must vote in the majority. The rights of the minority are protected by the discretionary power which is given to the Chair (and is frequently exercised) of refusing to accept a motion for the closure. These conditions are laid down in the standing orders on which the closure is based—Nos. 26 and 27.

#### MULTIPLICATION OF SPEECHES

By the provisions of the standing order the closure is adapted to debates which can be disposed of by a single question or a question with a single amendment—such as substantive motions or the second or third reading of bills. For when an amendment to a motion has been disposed of under closure, paragraph (2) of S.O. No. 26, provides, subject to the

discretion of the Chair, for the putting of the question on the motion as well. In deciding whether a motion for the closure is justified, that is to say, whether the amount of time already occupied by a debate is adequate to the importance of the subject, the Chair is guided by certain obvious considerations. For instance, when a private Member's bill or motion has been debated during the sitting or half-sitting which the standing orders allot for such proceedings, it is a reasonable view that the Member in charge is entitled to obtain the decision of the House on his proposal; and accordingly in such a case, the Speaker would only withhold his assent to a motion for the closure if the subject proposed by the private Member was manifestly of too far-reaching or controversial a character to be adequately debated in the time provided by the standing order.

#### MULTIPLICATION OF AMENDMENTS

The ordinary closure is much less effective in the course of the committee and report stages of bills and, occasionally, on motions, when the problem to be dealt with is caused by the multiplication of amendments. If all the amendments that are sometimes offered were moved and debated exhaustively, the process of disposing of them by closure might take an inordinate amount of time. To meet opposition of this kind a special form of closure, known as "closure upon the words of a clause" is laid down by paragraph (3) of S.O. No. 26. This paragraph gives power, under the same conditions as the ordinary closure, to secure a decision on a clause, or defined portion of a clause, to the exclusion of all amendments that have been, or may be, offered. This power has proved too drastic and its application too indiscriminate for practical use. Experience has shown that in such cases the discretion conferred on the Chair by S.O. No. 28 to select the amendments which may be moved is the best method of securing reasonable opportunities for all varieties of opinions. This power is exercised by the Chair in such a way as to bring out the salient points of criticism, to prevent repetition and overlapping, and, where several amendments deal with the same point, to choose the more effective and the better drafted.

The power to select amendments, since it was permanently conferred upon the Chair in 1919<sup>(a)</sup>, has proved, owing to the unexceptionable manner in which the Chair has exercised its discretion, the most satisfactory method hitherto devised for turning the time available for debate to the best possible use. But it does not meet the occasions, which arise under governments of whatever political complexion, when, in order to secure the passage of specially important and very complex or very controversial legislation, the leaders of the House are confronted with the choice, unless special powers are taken, of cutting down their normal programme to an undesirable extent, or of unreasonably prolonging the sittings of Parliament, or else of acknowledging the impotence of the majority of the House in the face of the resistance of the minority. In such circumstances resort is had sooner or later to the most drastic method of curtailing

(a) Previously it had been conferred *pro re nata* in the case of specified words in a motion, clause or schedule under debate by an order moved under the same conditions as the closure.

debate known to procedure, namely the allocation of a specified number of days to the various stages of a bill, and (in the case of the committee and report stages) of limited amounts of time to particular portions of the bill, together with provision for securing the disposal of the stages or portions of the bill at the end of the time allotted for each. This method is not provided for by the standing orders but is applied, when the need arises, by special orders of the House, known officially as "Allocation of Time" orders, and colloquially as "Guillotine" or "Closure by compartment" orders. The provisions of these orders are described in detail in the third section of this chapter. They may be regarded as the extreme limit to which procedure goes in affirming the rights of the majority at the expense of the minorities of the House, and it cannot be denied that they are capable of being used in such a way as to upset the balance, generally so carefully preserved, between the claims of business and the rights of debate. But the harshness of this procedure is to some extent mitigated by consultations between the leaders of parties with a view to establishing the greatest possible measure of agreement as to the most satisfactory disposal of the time available. In one case a voluntary agreement for allotting time to the stages of a bill was reached between the parties with the help of the chairman, and satisfactorily followed (see p. 460).

#### PROCEEDINGS AKIN TO CLOSURE

Other provisions, of the nature of methods for curtailing debate, which form part of the procedure of the House or have been devised for special occasions, may be mentioned.

S.O. No. 14 embodies what is in effect a permanent "guillotine" of supply extending over the whole session, with provision for the closed voting of the main estimates, before a certain date (see p. 688).

It may be recalled that the "previous question" is capable of being used to produce the same result as the closure (see p. 384). When it is put in the form (which is now regular) "That the question be not now put," if it is negatived, the original question has to be put immediately; while, if it is agreed to, such agreement disposes for the time being of the original question and with it of any amendments which were proposed to be moved to it. Normally, the previous question is not helpful to business which the majority wish to pass, but occasions may arise in which, especially in the form "That this House do pass to the orders of the day," the previous question may be used to preclude debate on such matters as privilege motions, and even on motions connected with government business, such as instructions proposed to be moved on first going into committee on a bill.

References may also be made to certain motions, analogous to closure motions, which have been moved to meet the circumstances of particular cases.

The first example that may be mentioned, that of a motion which met the case of an excessive number of amendments placed upon the notice paper on the report stage of a private bill—was as follows: "That inasmuch as this bill has been carefully considered by a select committee, this House declines to entertain amendments which ought to have been brought before the committee, and that the bill be ordered to be read the third time" (*b*). The

(b) C. J. (1888) 330, Parl. Deb. (1888) 328, c. 36.

second example was occasioned by an unprecedented multiplication of instructions to the committees upon certain bills. It assumed the form of an amendment to be moved upon the first instruction which stood upon the notice paper to the committee on the Allotments Act Amendment Bill, in session 1890, to the effect "That this House declines by any instruction to extend the scope of the bill in question." The amendment was not moved, upon the understanding that it was reserved for use, in case more than one instruction to the bill was moved (c).

## I. CLOSURE OF DEBATE

The closure has two principal forms: (1) the ordinary closure; (2) closure upon the words of a clause. The ordinary closure rule contains provisions which admit of the extension of the closure, once it has been carried, to secure an immediate decision on any question already proposed from the chair. This extension of the rule may be called the "closure upon contingent questions."

### THE ORDINARY CLOSURE

While the Speaker is in the chair, or the Chairman of Ways and Means or the Deputy Chairman is in the chair in committee of the whole House, if a Member rising in his place, after a question has been proposed, moves, "That the question be now put," that question must be put, forthwith without amendment or debate, unless it appears to the Chair that the motion is an abuse of the rules of the House or an infringement of the rights of the minority. If, when a division is taken, it appears by the numbers declared from the chair, that not less than a hundred Members voted in the majority in support of the motion, it is decided in the affirmative (d).

A motion for closure cannot be accepted by the Chairman of Ways and Means or the Deputy Chairman when sitting as Deputy Speaker under S.O. No. 80 (3), (e) or by a temporary chairman of a committee of the whole House acting in that capacity at the request of the Chairman of Ways and Means; but when the Speaker's unavoidable absence has been announced the Chairman of Ways and Means or Deputy Chairman who takes the chair as Deputy Speaker under S.O. No. 80 (1) has the same powers as regards closure as the Speaker.

**When closure is movable.**—Closure may be moved at the conclusion of a speech (f), or whilst a Member is addressing the House, and in the latter case intercepts any motion which it was his intention to move. The intervention of the Chair regarding closure is restricted to occasions when the motion is made in abuse of the rules of the House, or infringes the rights of the minority. A closure motion may therefore be sanctioned by the Chair, either immediately upon, or within a few minutes after,

(c) Parl. Deb. (1890) 344, c. 18, 19.

(d) Motions failed, insufficient majority, C. J. (1887) 506; *ibid.* (1920) 109, etc.; negatived, *ibid.* (1888) 232; *ibid.* (1924) 42, 58, etc.

(e) H. C. Deb. (1913) 50, c. 571, *ibid.* 51, c. 1385.

(f) Parl. Deb. (1893) 12, c. 790.

the proposal of a question to the House. In the discharge of this duty, the discretion of the Chair is absolute and is not open to dispute. (g).

**Closure of contingent questions.**—As, without some further provision, the House might, even with the help of the closure, be unable to complete the matter then immediately in hand, directly after the motion, "That the question be now put," has been carried, and the question consequent thereon has been decided, the right is given under S.O. No. 26 (2) to claim, subject to the discretion of the Chair, *and without having recourse to any further closure motion*, that any further question be put which may be requisite to bring to a decision any question already proposed from the chair (h). The utility of this power is specially proved by its application at the moment, when, pursuant to standing order, an interruption of business would otherwise immediately take place. (see p. 452).

#### CLOSURE UPON THE WORDS OF A CLAUSE

An analogous, but wholly distinct, power is also conferred by S.O. No. 26 (para. 3), whereby, subject to the discretion of the Chair, when a clause is under consideration, a motion may be made, which must be decided forthwith—"That the question, 'That (certain words of the clause) stand part of the clause,' be now put," or "That the question, 'That a clause stand part of (or be added to) the bill,' be now put." These motions, if the questions put thereon are carried, override all power of amendment to the words included in their scope.

Thus, for instance, in committee upon a bill, after certain additions proposed to subsection 3 of the fifth clause had been negatived, a Member rose and moved, "That the question, 'That the word *where*' (being the initial word of subsection 4) 'stand part of the clause,' be now put." The closure motion, and the question consequent thereon, were carried, and thereby all further additions to subsection 3 were excluded (i).

The closure motions that certain words should stand part of a clause, or that a clause should stand part of a bill, apply to a schedule as to a clause (j), and, though the standing order appears to have been designed only for use in committee, have been applied on consideration of a bill though in a slightly different form (k).

On consideration of a bill, as amended, closure has been moved extending to words beyond those of the clause to which the last amendment applied (k). If, after closure, the question "That the words of the Bill to the end of

(g) Parl. Deb. (1887) 313, c. 177; *ibid.* 329, c. 57; C. J. (1893-94) 123; H. C. Deb. (1921) 146, c. 1595; *ibid.* (1935-36) 309, c. 823. For cases in which the Chair has explained the acceptance or refusal of a motion for closure after a short debate, see Parl. Deb. (1892) 3, c. 1640; *ibid.* (1901) 89, c. 1390; H. C. Deb. (1911) 29, c. 1268. A question to a Minister as to the time at which the closure will be moved is irregular, Parl. Deb. (1901) 89, c. 1061; *ibid.* (1905) 141, c. 781.

(h) Parl. Deb. (1892) 3, c. 138. Contingent questions, which have not actually been proposed from the Chair—such as the question that the House agrees with the report of a Committee after an amendment has been disposed of under the closure—fall within the scope of this provision (see p. 453).

(i) C. J. (1890-91) 264, 344; *ibid.* (1892) 317.  
(j) C. J. (1893-94) 161; *ibid.* (1896) 122; *ibid.* (1905) 402. Parl. Deb. (1905) 151, c. 538.

(k) C. J. (1906) 458.



a clause stand part of the bill " be agreed to, on consideration of a bill as amended, amendments by way of additions to the clause may be moved (*l*).

These motions also can be made although closure has not been previously enforced during the consideration of the clause ; nor is it necessary that closure should have been moved on the question last proposed from the chair.

Thus, on consideration of a bill as amended, no antecedent closure having been moved, a Member rose and moved, " That the question, ' That (certain specified words) of a clause stand part of the bill,' be now put," and the question on the closure motion was put from the chair (*m*). In committee on a bill although no antecedent closure has been moved, both the motion, " That the question ' That (certain words) stand part of the clause ' be now put," (*n*) and the motion, " That the question ' That the clause stand part of the bill ' be now put," (*o*) have been made.

Probably for the reasons mentioned earlier and owing to the power conferred on the Chair to select amendments, since 1919 resort to the powers of closure conferred by para. 3 of S.O. No. 26 has been infrequent.

#### CLOSURE AT MOMENT OF INTERRUPTION

Under S.O. No. 1 (*4*), closure may be moved at the moment for the interruption of business. Under ordinary circumstances, on the appointed hour being reached, the Speaker or chairman says, " Order, order," and proceeds to interrupt the business. The Speaker announces that the debate stands adjourned, or the chairman proceeds to leave the chair to make his report to the House. These proceedings on the part of the Speaker or the chairman create the moment of the interruption of business, when closure may be moved. The moment for the interruption of business, is, however, as has been mentioned on p. 308, projected forward beyond the hour fixed by the standing orders, if the House at that hour is engaged in a division. The Speaker, or the chairman if the House is in committee, after the question upon which the division is being taken has been decided, continues the proposal of such further questions as are necessary to complete the proceeding, until a Member rises to speak, or says, " I object to further proceedings." It is then that the moment for the interruption of business arrives and that the closure motion may be moved (*p*).

For instance, in the Committee of Supply the proceedings on a division to decide the question for the reduction of a grant were not completed until after the time fixed for the interruption of business, whereupon the chairman proposed the original question, namely, the grant itself. As a Member offered to speak thereto, the chairman proceeded to interrupt the business, when closure was moved, and carried ; the original question was put accordingly ; and the chairman left the chair to report the resolution to the House (*q*). When in similar circumstances the motion for closure was nega-

(*l*) C. J. (1906) 291, 436.

(*m*) Parl. Deb. (1889) 338, c. 639, 644 ; C. J. (1889) 343 ; *ibid.* (1890-91) 344.

(*n*) C. J. (1922) 48, H. C. Deb. (1922) 151, c. 979.

(*o*) C. J. (1901) 340, Parl. Deb. (1901) 97, c. 1526.

(*p*) C. J. (1888) 268 ; *ibid.* (1908) 477 ; Parl. Deb. (1908) 197, c. 1843.

(*q*) C. J. (1888) 242, 246, 470, Parl. Deb. (1888) 326, c. 872, 999 ; *ibid.* 330, c. 1217 ; C. J. (1907) 289, Parl. Deb. (1907) 177, c. 266.

tived, the chairman again proposed the original question and on objection being taken to further proceeding left the chair to make his report to the House (r). On consideration of a bill on report the division on an amendment proposed to a clause was not concluded until after the time fixed for the interruption of business. At the conclusion of the division the Speaker proceeded to interrupt the business when a Member moved, "That the question, 'That the words of the clause stand part of the bill,' be now put." The closure motion and the question consequent thereon were carried, after which further proceeding on consideration of the bill as amended stood adjourned (s).

**Closure claimed on contingent questions at moment of interruption.**—As has been explained on p. 451, after a closure motion has been moved and acted upon, any Member may claim that such further questions be put forthwith as are requisite to bring to a decision the question already proposed from the chair, no second closure motion being necessary (t). In that case, unless the assent of the Chair be withheld, such further questions are successively put forthwith, regardless of the fact that the hour for the interruption of business is over-past.

When a resolution reported from a committee was under the consideration of the House, and an amendment thereto had been negatived upon a closure motion, the question, "That this House doth agree with the committee in the said resolution," was claimed and put accordingly (u). When a closure motion had been carried which disposed of an amendment to an amendment, first the question on the amendment itself, and then on the main question, were forthwith claimed and decided by the House (a). When the House had negatived the question for the Speaker's leaving the chair for the Committee of Supply, upon the consequent question that the words proposed by way of amendment to the main question be there added, closure was moved and acted upon; the words were added, and then the main question, so amended, was claimed and put from the chair (b). When in committee closure has been moved on a motion to report progress and the latter motion has been negatived, the question on the amendment under consideration when progress was moved has been claimed and put from the chair (c).

## 2. THE SELECTION OF AMENDMENTS

By a standing order of 1919 the Speaker, or in committee the Chairman of Ways and Means and the Deputy Chairman, are given power in respect of any motion or any bill under consideration either in Committee of the whole House or on report, to select the new clauses or amendments to be proposed (d). In exercising these powers the Chair either selects

(r) C. J. (1914) 251.

(s) C. J. (1896) 304, Parl. Deb. (1896) 42, c. 47; C. J. (1912-13) 224. For similar procedure in committee on a bill, see C. J. (1902) 342, Parl. Deb. (1902) 110, c. 1181.

(t) C. J. (1888) 504, Parl. Deb. (1888) 331, c. 1703; C. J. (1889) 53, Parl. Deb. (1889) 333, c. 1101; C. J. (1892) 249; *ibid.* (1904) 51, Parl. Deb. (1904) 130, c. 869.

(u) C. J. (1890) 512; *ibid.* (1901) 369, Parl. Deb. (1901) 98, c. 1212; H. C. Deb. (1921) 142, c. 1007; C. J. (1922) 378; *ibid.* (1927) 132.

(a) C. J. (1892) 166, 196.

(b) C. J. (1892) 249.

(c) C. J. (1902) 408; *ibid.* (1923) 221.

(d) C. J. (1919) 37.

the amendments to be moved (*e*) and announces the selection, or without preliminary announcement as to the amendments which he proposes to accept, calls on Members one by one to move the amendments standing in their names which he decides to select (*f*).

The Speaker or, in Committee, the Chairman or Deputy Chairman, has declined to indicate in advance the amendments that he would select (*g*), but has during the consideration of the new clauses proposed by the Government intimated those clauses standing in the names of unofficial Members which he proposed to select (*h*). He has selected amendments without giving any reason for passing over previous amendments (*i*) and has pointed out that an amendment was not out of order but was passed over (*j*). He has stated that he has selected the most important amendments (*k*), and that he passed over amendments on the ground that they had been discussed in committee (*l*). An amendment has been passed over also because it was too far remote from the purposes of the bill (*m*). The Speaker has said that he did not select a new clause on account of the amount of discussion that it had received in committee (*n*). In committee the chairman has said that he did not select certain amendments as the questions raised by them had been covered by a previous decision (*o*), and has selected an amendment on the understanding that only a brief statement would be made upon it (*p*). The chairman has announced that he did not select any further amendments on the clause under consideration or any amendments on another clause (*q*). He has declined also to select amendments which had not been put upon the notice paper (*r*).

The power to select amendments includes the power to select amendments proposed to be moved to an amendment selected by the Chair (*s*). The Chair may ask any Member who has given notice of an amendment to give such explanation of his amendment as may be necessary to form a judgment upon it (*t*).

The power of selecting amendments has recently been extended to the chairmen of standing committees (see p. 618-19).

### 3. ALLOCATION OF TIME ORDERS

As stated earlier, the allocation of limited amounts of time to the stages of bills, and occasionally other kinds of business, forms no part of the

(*e*) H. C. Deb. (1909) 9, c. 113. See also *ibid.* (1912) 42, c. 1260, 1456; *ibid.* (1912) 44, c. 2525; *ibid.* (1920) 132, c. 2849; *ibid.* (1920) 133, c. 1782; *ibid.* (1921) 141, c. 1908, 1969.

(*f*) H. C. Deb. (1909) 9, c. 373, 375, 609.

(*g*) H. C. Deb. (1921) 142, c. 868; *ibid.* (1937-8) 330, c. 603.

(*h*) H. C. Deb. (1922) 156, c. 1233, 1313, 1319.

(*i*) H. C. Deb. (1919) 117, c. 437.

(*j*) H. C. Deb. (1919) 116, c. 781; *ibid.* (1920) 135, c. 101.

(*k*) H. C. Deb. (1919) 114, c. 495.

(*l*) H. C. Deb. (1919) 114, c. 519; *ibid.* (1919) 118, c. 1468; *ibid.* (1919) 119, c. 1699; *ibid.* (1920) 132, c. 1811; *ibid.* (1920) 134, c. 2212; *ibid.* (1923) 166, c. 251.

(*m*) H. C. Deb. (1920) 135, c. 2203.

(*n*) H. C. Deb. (1922) 156, c. 1319.

(*o*) H. C. Deb. (1920) 131, c. 2330.

(*p*) H. C. Deb. (1922) 159, c. 1429.

(*q*) H. C. Deb. (1919) 122, c. 688.

(*r*) H. C. Deb. (1923) 166, c. 2143.

(*s*) H. C. Deb. (1909) 9, c. 808.

(*t*) H. C. Deb. (1909) 9, c. 807; *ibid.* (1921) 147, c. 1109.

general procedure of the House, but is applied in each case to a particular bill (or occasionally several bills jointly) (*u*) or other specified business by a special order. Provision for the stages of a financial resolution in connection with a bill is sometimes included in an order allotting time to the stages of a bill, and in such a case, if the committee on the financial resolution is deemed to have been set up, the King's recommendation is signified to the motion for allotting time (*a*). Besides allotting time "Guillotine" orders regularly contain a number of other provisions designed to facilitate the transaction of the proceedings in respect of which these powers are taken. In effect they prescribe a special summary procedure, which, allowance being made for differences appropriate to different circumstances, has in course of time assumed a more or less standardized form.

#### USUAL PROVISIONS OF ALLOCATION OF TIME ORDERS

The regular provisions may be set out as follows. For a typical recent example of such an order reference may be made to the Ottawa Agreements Bill (Allocation of Time) Order (*b*).

**Stages of Bill.**—An Allocation of Time order is not usually moved until after the second reading of a bill, and often not until the rate of progress in committee has provided an argument for its necessity. The first provision of such an order details the stages (or remaining stages) of the bill (including, if necessary, any related financial resolution) to which it applies, and allots in the form of a time table a certain number of days to each stage, and in the case of the committee and report stages sets out the hour on each allotted day by which the proceedings on specified portions of the bill are to be concluded.

The second reading of a bill has been taken immediately after the order allocating time to it has been made, and has been ordered to be brought to a conclusion at eleven o'clock that day or at the expiration of four hours from the commencement of the proceedings thereon, whichever might be the later, C. J. (1920) 362.

Instructions to committees on bills have been excluded (C. J. (1910) 304; *ibid.* (1918) 50) or the Speaker has been directed to put the question thereon after a brief speech from the Member who moved the instruction and from the Minister in charge of the bill (C. J. (1909) 227, 229), or proceedings on instructions have been included in one of the days (C. J. (1912-13) 433) or part of one of the days (C. J. (1928-29) 61) allotted to the committee stage of the bill.

On some occasions a number of days has been allotted to the report stage, but the distribution of the various parts of the bill among them has been left to be determined subsequently by the House by means of a motion. The manner in which the motion should be made and the limit of time allowed for it have been determined by the order of the House, C. J. (1908) 338; *ibid.* (1912-13) 366, 433. The business to be taken on certain of the days allotted to the report stage of a bill has also been changed by an order

(*n*) Two bills, C. J. (1908) 42; three bills, C. J. (1913) 193; *ibid.* (1914) 204.

(*a*) C. J. (1908) 39; *ibid.* (1910) 102; see also *ibid.* (1938-39) 402, 405; *ibid.* (1939-40) 139.

(*b*) C. J. (1931-32) 323-24.

of the House, *ibid* (1911) 505 ; *ibid.* (1930-31) 326. One day has been allotted to the report stage and third reading of a bill, *ibid.* (1918) 50 ; and one day has been allotted to all the stages after second reading, *ibid.* (1920) 362. The time at which the third reading of a bill should be brought to a conclusion has been changed by order of the House, *ibid.* (1921) 332 ; and a similar change has been made in respect of the committee stage of a bill, *ibid.* (1938-39), 232.

**Definition of allotted day.**—The second provision defines an allotted day " as any day on which the bill is put down as the first order of the day."

The day on which an Allocation of Time Order has been passed has been used as the first allotted day of the bill to which it related, C. J. (1938-39), 224-25.

**Provision for Fridays.**—Another provision sets out the changes in the time table which will be necessary in the case of an " allotted day " falling on a Friday.

**Machinery for bringing proceedings to a conclusion.**—Provision is also made that for the purpose of bringing to a conclusion any proceedings which are to be brought to a conclusion at a time appointed by the order, and which have not previously been brought to a conclusion, the Speaker or the Chairman is first to put forthwith the question on any amendment or motion already proposed from the chair (and if a new clause has been read a second time, also the question " That the clause be added to the bill ") (c), and thereafter, until the stage or portion then to be disposed of has been concluded, only those amendments, new clauses or new schedules, of which notice has been given by the Government, and such other questions as are necessary for the disposal of the business to be concluded, may be proposed. With a view to reducing the number of divisions to be taken, the question on amendments is directed to be put in the form " that the amendment be made," while in the case of new clauses or new schedules, the only question put is " that such clause (or schedule) be added to the bill."

**Opposed Private Business and Adjournment Motions.**—Another provision modifies S.O.s Nos. 6 (4) and 8 by ordering that, if on an allotted day private business is set down by direction of the Chairman of Ways and Means, or a motion for adjournment under S.O. No. 8 stands over, such business or motion shall instead of being taken at 7.30 p.m. be taken when the consideration of the business set out in the time table for the day has been concluded. The paragraph also provides that any such business, or motion for the adjournment, shall be exempted from the provisions of the standing order relating to Sittings of the House.

The setting down of private business and the taking of an adjournment motion under the standing order on an allotted day has been forbidden, Territorial and Reserve Forces Bill, C. J. (1907), 165-66.

**Exemption from Eleven o'clock Rule.**—Another provision exempts proceedings for the purpose of concluding the business to be concluded on an allotted day from the provisions of the S.O. (Sittings of the House).

This provision is unnecessary in the case of bills such as the Ottawa Agreements Bill which, originating in Committee of Ways and Means, are exempted business under S.O. No. 1 (6).

**Precedence over Private Members' business.**—Provision may also be made for giving precedence to proceedings under the order on days allotted by S.O. No. 3 to private Members' business (d).

**Dilatory Motions.**—It is also provided that on days on which proceedings under the order are to be brought to a conclusion, or in some cases on any allotted day, dilatory motions on the bill, or motions to re-commit the bill (e) to postpone a clause, *or that the chairman do report progress or leave the chair* (f), are forbidden, unless moved by the Government when the question thereon is to be put without amendment or debate.

The order has been held to apply to a day on which certain proceedings were to be concluded under the time table, although those proceedings had been concluded on a previous day (H. C. Deb. (1931-32, 269) c. 1936-37).

Mr. Speaker has ruled privately that the fact that the business before the House consisted of proceedings under an allocation of time order should not prevent the House being counted on notice taken that forty members were not present.

**Savings.**—It is also regularly provided that nothing in the order shall prevent any proceedings, which under the order are to be concluded on any particular day, being concluded on any other day; or necessitate any particular day or part of a particular day being given to any such proceedings, if those proceedings have been otherwise disposed of; or prevent any other business being proceeded with on any particular day, or part of a particular day, in accordance with the standing orders of the House, after any proceedings to be concluded under the order on that particular day, or part of a particular day, have been disposed of.

**Financial procedure.**—A final provision enables the order to have effect notwithstanding the practice of the House relating to the interval between the stages of any bill.

Proceedings under an order have been given effect to notwithstanding the provision of S.O. No. 68, C. J. (1910) 104.

**Provision as to Saturday sitting.**—Power has also been taken in these orders to obtain a sitting of the House on a Saturday at a specified hour or to change the hour of meeting on a Friday (g) for the purposes of the bill dealt with in the order, while notices of questions for oral answer on a Friday or Saturday, which was an allotted day under the order, were ordered to be treated as notices for the following Monday (h).

#### OTHER POWERS CONFERRED BY ORDERS

In addition to these normal provisions and to suit special circumstances these orders have occasionally contained other powers.

(d) C. J. (1938-39) 224.

(e) A motion to re-commit a bill is not a dilatory motion and may be made unless it is specifically forbidden, C. J. (1906) 362.

(f) The words in italics, though commonly inserted, are unnecessary as being covered by "dilatory motions."

(g) C. J. (1908) 464; *ibid.* (1912-13) 506.

(h) C. J. (1908) 464.

*Motion to leave out clauses, &c., before discussion thereon.*—Provision has been made to enable the Government to move to leave out a part of the bill or any clause or schedule or consecutive clauses or schedules of the bill before consideration of any amendments thereto in committee, and the question on any such motion has been ordered to be put forthwith by the chairman, without amendment or debate (*i*), or after a brief explanatory statement from the Minister in charge and from any one Member who rises to criticize the statement (*j*). When a part of a bill was committed under one of these orders to a standing committee, this power was extended to the standing committee during its consideration of this part of the bill.

*Provision for one question on a series of clauses.*—The chairman has been directed in the case of a series of clauses to which no notice of amendment has been given by the Government to put the question that those clauses stand part of the bill instead of putting a question on each clause separately (*k*).

*Committal of part of a bill to a standing committee.*—By one of these orders in the case of a bill which had been read a second time and committed to a committee of the whole House, the House ordered that one part of the bill (including the schedules therein referred to, and any new clauses dealing with the subject-matter of that part of the bill) should stand committed to a standing committee, as if the bill on being read a second time had as respects those provisions been so committed (*l*). On another occasion a bill which had been committed to a standing committee and allocated by the Speaker was ordered to be allocated to another standing committee in respect of certain portions of the bill (*m*). The remaining provisions of the bill continued committed to the original committee in each case, and the House ordered that when the provisions committed to each committee should have been reported to the House, the report stage of the bill should be proceeded with as if the bill had been reported as a whole to the House (*n*).

#### ORDERS IN CASE OF BILLS REJECTED BY LORDS

Special provisions have been made in Allocation of Time orders dealing with bills rejected by the House of Lords.

In the case of bills which have been re-introduced into the House of Commons, in the session subsequent to that in which they did not pass the House of Lords, with only such alterations as are contemplated by section 2 (4) of the Parliament Act, 1911 (see p. 562), the chairman has been ordered on the committee stage of a bill to put forthwith the question that he do report the bill, without amendment, to the House, without putting any other question. The question so put has been ordered to be decided without amendment or debate (*o*). In some cases the Speaker has been directed, when the order of the day is read for the House to resolve itself into committee on the bill, to leave the chair without putting any question, notwithstanding that notice of an instruction has been given (*p*). The chairman has been directed at the close of a specified period to bring to a conclusion the committee stage of any financial resolution relating to the bill, and on the report stage of the financial resolution the Speaker has been directed to put forthwith the question

(*i*) C. J. (1906) 255; *ibid.* (1908) 338, 464; *ibid.* (1909) 229; *ibid.* (1910) 304.

(*j*) C. J. (1911) 439; *ibid.* (1912-13) 366; *ibid.* (1921) 196, 248, 344.

(*k*) C. J. (1921) 196, 259.

(*l*) C. J. (1911) 439.

(*m*) C. J. (1921) 247.

(*n*) C. J. (1911) 439, 477, 487; *ibid.* (1921) 247, 273, 281.

(*o*) C. J. (1913) 192; *ibid.* (1914) 204.

(*p*) C. J. (1914) 204.

that the House doth agree with the committee in the resolution without putting any other question, the question so put being decided without amendment or debate (q).

*Order relating to Finance (1909-10) Bill.*—In the case of the Finance (1909-10) Bill of session 1910, which was introduced to take the place of the Finance Bill rejected by the House of Lords in the previous session (see p. 764), the order of the House prescribing the proceedings for passing it dealt with all the stages of the bill and the committee and report stages of the ways and means resolutions and of any other financial resolutions (r). On the motion being made, the king's recommendation was signified to the subject-matter of the resolutions to be proposed in the committee on the financial resolutions (s). The subjects of the resolutions of the previous session were set out in appendices to the order, and it was ordered that, if the resolutions to be proposed in Committee of Ways and Means corresponded with those on which the Finance Bill of the previous session was brought in and amended, so far as effect was given to those resolutions by the bill as passed by the House of Commons, the committee stage of those resolutions should be proceeded with, as if the resolutions constituted certain specified groups, each of which was to be treated as a single resolution, while the report stage was to be proceeded with as if all the ways and means resolutions constituted a single resolution. A similar provision was made for the financial resolutions, these being treated, if corresponding with those of the previous session, as a single resolution. The resolutions reported from the Committee of Ways and Means and the committee on the financial resolutions were ordered to be successively considered forthwith, and a bill was to be ordered to be brought in upon them without question put. It was provided that on the committee stage of the bill no amendments should be in order except amendments which, in the opinion of the chairman, were properly moved as amendments to any words or matter which represented additions to the Finance Bill of the previous session, as passed by the House of Commons, or substitutions for words or matter in that bill, or which were moved for the purpose of reinserting words or matter contained in that bill, but not contained in the bill before the House, or amendments necessarily consequential thereon, and no question was to be put by the chairman except a question that an amendment, which was in order, should be made, and all parts of the bill were to be deemed to stand part of the bill (subject to any such amendment) without question put. This order was given effect notwithstanding anything in S.O. No. 71 (now 68), and notwithstanding the practice of the House relating to the interval between the committee and report stage of any resolution or bill.

#### LIST OF ALLOCATION OF TIME ORDERS

The following is a list of the chief orders that have been made by the House of Commons for allotting time to bills and other business.

*Bills.*—Criminal Law Amendment (Ireland) Bill, C. J. (1887) 285, 332; Members of Parliament (Charges and Allegations) Bill, *ibid.* (1888) 420; Government of Ireland Bill, *ibid.* (1893-94) 400, 513; Evicted Tenants (Ireland) Arbitration Bill, *ibid.* (1894) 334; Education (England and Wales)

(q) C. J. (1913) 192; *ibid.* (1914) 204.

(r) C. J. (1910) 103.

(s) C. J. (1910) 102.



Bill, *ibid.* (1902) 473 ; Licensing Bill, *ibid.* (1904) 291 ; Aliens Bill, *ibid.* (1905) 294 ; Education (England and Wales) Bill, *ibid.* (1906) 255 ; Plural Voting Bill, *ibid.* 464 ; Territorial and Reserve Forces Bill, *ibid.* (1907) 166 ; Evicted Tenants (Ireland) Bill, *ibid.* 347 ; Small Landholders (Scotland) Bill, *ibid.* 392 ; Small Holdings and Allotments Bill, *ibid.* 408 ; Small Landholders (Scotland) Bill and Land Values (Scotland) Bill, *ibid.* (1908) 42 ; Old Age Pensions Bill, *ibid.* 258 ; Licensing Bill, *ibid.* 338, 439 ; Elementary Education (England and Wales) (No. 2) Bill, *ibid.* 464 ; Housing, Town Planning, &c., Bill, *ibid.* (1909) 227 ; Irish Land Bill, *ibid.* 229 ; Finance (1909-10) Bill, *ibid.* (1910) 103 ; Finance (No. 2) Bill, *ibid.* 304 ; Revenue Bill, *ibid.* (1911) 106 ; Parliament Bill, *ibid.* 200 ; National Insurance Bill, *ibid.* 439, 505 ; Government of Ireland Bill, *ibid.* (1912-13) 366, 469 ; Established Church (Wales) Bill, *ibid.* 433, 517 ; Franchise and Registration Bill, *ibid.* 506 ; Government of Ireland Bill, Established Church (Wales) Bill, and Temperance (Scotland) Bill, *ibid.* (1913) 192 ; Government of Ireland Bill, Established Church (Wales) Bill, and Plural Voting Bill, *ibid.* (1914) 204 ; Finance Bill, *ibid.* 330 ; Military Service Bill, *ibid.* (1918) 50 ; Restoration of Order in Ireland Bill, *ibid.* (1920) 362 ; Safeguarding of Industries Bill, *ibid.* (1921) 196 ; Railways Bill, *ibid.* 247 ; Trade Disputes and Trade Unions Bill, C. J. (1927) 160 ; Unemployment Insurance Bill, C. J. (1927) 353 ; Rating and Valuation (Apportionment) Bill, C. J. (1928) 234, amended 252 ; Local Government Bill and Local Government (Scotland) Bill, C. J. (1928-29) 61 ; Representation of the People (No. 2) Bill, C. J. (1930-31) 150 ; Finance Bill, C. J. (1930-31) 279, amended 326 ; Finance (No. 2) Bill and National Economy Bill and Supply and Ways and Means, C. J. (1930-31) 426 ; Import Duties Bill, C. J. (1931-32) 80 ; Ottawa Agreements Bill, C. J. (1931-32) 323, amended 329 ; Unemployment Bill, C. J. (1933-34) 43 ; Military Training Bill and Reserve and Auxiliary Forces Bill, C. J. (1938-39) 224, amended 232.

*Other Business.*—Business of Supply to be concluded before end of financial year, C. J. (1905) 70 ; *ibid.* (1913) 22 ; Business of the House (Procedure), *ibid.* (1907) 114 ; Relations of the two Houses and Duration of Parliament, *ibid.* (1910) 74 ; a supplementary estimate and consequential ways and means resolution, and Consolidated Fund (Appropriation) Bill, *ibid.* (1910) 305. Motion relating to supply and a Consolidated Fund Bill, withdrawn, *ibid.* (1918) 49. The order with regard to Relations of the two Houses and Duration of Parliament included the introduction without question put of a bill founded on any resolutions agreed to.

#### VOLUNTARY ARRANGEMENTS IN PLACE OF ALLOCATION OF TIME ORDERS

Attempts have been made to substitute an agreement between parties in the House for the compulsory provisions of an Allocation of Time order for the purpose of securing the completion of business within a limited time. The most successful of these attempts was that in the case of a complicated and contentious bill but one which did not reproduce the ordinary lines of party cleavage—the Government of India Bill, 1935. The provisions adopted in this experiment may be summarized as follows :

A small business committee containing representatives of the Government and of the various sections opposed to the bill, and presided over by the Chairman of Ways and Means, was appointed informally. The Government agreed to allow thirty days for the committee stage of the bill, and the business committee undertook (so far as they could) that the committee stage should

be completed in that time. A provisional time table was then drawn up by the business committee for completing the committee stage in twenty-six days, the remaining four days being reserved for use as might be required. The business committee continued in existence throughout the committee stage of the bill with a view to revising the provisional time table as circumstances might from time to time require. The arrangement was communicated by the Prime Minister to the House. After the commencement of the committee stage of the bill the business committee seldom met : but the Chairman kept in touch with the members of that committee and from time to time in committee on the bill indicated the extent to which he considered sufficient progress had or had not been made, and the progress he considered ought to be made during a particular day or number of days, in order to finish within the allotted time. In the result the committee stage was completed shortly after 11 p.m. on the last of the thirty allotted days.

In the case of the Education Bill, 1943, no time limit for the bill was fixed, but the Government, after conversation with the parties interested, produced a suggested programme to complete the committee stage of the bill before Easter. In the result, the committee stage was completed in the time suggested (H. C. Deb. (1943-44) 397, c. 1583).

## CHAPTER XX

# PROCEEDINGS OF PARLIAMENT IN PASSING PUBLIC BILLS

In this chapter the present method of passing bills in Parliament is described. The practice of the Lords in regard to the several stages of bills and the proceedings connected with them is in the main similar to that of the Commons. For the sake of clarity, however, the passage of a bill through the House of Lords is described in a separate section, with the exception of the final stages, which are common to both Houses, and are described in detail in the section dealing with the House of Commons.

### WHERE BILLS ORIGINATE

While as a general rule bills may originate in either House, the exclusive right of the House of Commons to grant supplies and to impose and appropriate all charges upon the people renders it necessary to introduce by far the greater proportion of bills into that House. For obvious reasons also, measures which are likely to arouse political controversy are generally introduced in the House of Commons.

**Bills concerning privileges of one House.**—A bill which concerns the privileges or proceedings of either House should, in courtesy, commence in that House to which it relates (*a*).

Objection was taken in the Lords to the Poor Litigants (Scotland) Bill, 1920, which had been received from the Commons, on the ground that it repealed a standing order of the House of Lords as to costs in certain cases before that House, and the motion for the second reading of the bill was accordingly withdrawn (*b*).

Bills affecting the privileges of the other House have, nevertheless, been admitted without objection (*c*).

The Irish bishops and the bishops of the Church in Wales were excluded from their seats in the House of Lords by bills brought from the Commons (*d*); but in relation to the Vacation of Seats in Parliament Bill [*Lords*], 1832, Lord Radnor thought the other House "might take a technical objection to the measure, on the ground that it was one which ought not to have arisen in the House of Lords." Lord Northampton did not think "the subject was one with which their Lordships had no right to interfere." The order for the second reading was discharged (*e*).

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(*a*) 3 Hatsell 69; 1 Bl. Com. 168.

(*b*) L. J. (1920) 251; H. L. Deb. (1920) 40, c. 994.

(*c*) Representative Peers (Scotland and Ireland) Bill, 1869, Parl. Deb. (1869) 194, c. 984. Bill subsequently withdrawn. Bishops in Parliament (motion for leave to bring in a bill), 1834. Lords Spiritual (motion for leave to bring in a bill), 1870, Peeresses Bill, 1924.

(*d*) Irish Church Act, 1869; Welsh Church Act, 1914.

(*e*) L. J. (1832) 286; Parl. Deb. (1832) 13, c. 611, 1086.

Amendments, however, concerning the privileges and jurisdiction of the Lords have given rise to discussions in both Houses (*f*).

**Restitution bills.**—The Lords claim that bills for the restitution of honours and in blood should commence with them, and such bills are presented to that House by His Majesty's command (see p. 970).

**Bills of indemnity.**—An act of indemnity, protecting persons against the consequences of any breach of the law, can originate in either House and is proceeded with as an ordinary bill, though the bill is usually passed through all its stages at one sitting as being an urgent matter (*g*).

The Indemnity Bill, 1920, which was of far wider application, was not treated as urgent, and was committed to a Select Committee (*h*).

Bills of attainder (see p. 39) and bills for a general pardon, or act of grace, are now mainly of historical interest.

#### PUBLIC AND PRIVATE BILLS

Bills are divided into the two classes of public and private bills. The former relate to matters of public policy and are introduced directly by members of the House. Private bills are bills for the particular interest or benefit of any person or persons, public company or corporation, or local authority, and are solicited by the parties themselves who are interested in their promotion, being founded upon petitions deposited in accordance with the standing orders relating to private business.

In spite of this general distinction, however, it is sometimes difficult to determine to which category particular bills belong, and the question may arise whether a public bill, in that it affects certain private interests, ought not more properly to have been introduced as a private bill, or whether a bill, introduced as a private bill, should be prevented from proceeding on the ground that its scope was so wide that it affected public policy. These distinctions are elaborated in Chapter XXX. The greater part of the proceedings described in this chapter apply equally to both classes of bills; but the progress of private bills is governed by so many peculiar regulations and standing orders, in both Houses, that an entire separation of the two classes can alone make the progress of either intelligible.

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(*f*) See debate in the Lords on the Court of Chancery Improvement Bill (then in the Commons) 23 June 1851, *Parl. Deb.* (1851) 117, c. 1069; and debates in Lords and Commons in 1873 on amendments proposed to be made in the Commons to the Judicature Bill, by which appeals from the courts of Scotland and Ireland were to be withdrawn from the House of Lords, *Parl. Deb.* (1873) 217, c. 10, 154; and debates in both Houses on amendments affecting the position of peeresses in their own right to the Parliament (Qualification of Women) Bill in 1918, *L. J.* (1918) 288; *H. L. Deb.* (1918) 32, c. 140; *C. J.* (1918) 232; *H. C. Deb.* (1918) 110, c. 2194; and to the Sex Disqualification (Removal) Bill in 1919 and the Lords' reason for disagreeing with a Commons' amendment in the latter case, *L. J.* (1919) 431, 432; *H. L. Deb.* (1919) 37, c. 168; *C. J.* (1919) 330, 376; *H. C. Deb.* (1919) 120, c. 349; *ibid.* 121, c. 1841.

(*g*) Earl of Winchelsea's Indemnity Bill, 1820; Lord Harborough's Indemnity Bill, 1820; Earl of Scarborough's Indemnity Bill, 1841; Forsyth's Indemnity Bill, 1866; Lord Byron's Indemnity Bill, 1880; Lord Plunket's Indemnity Bill, 1880; William Preston Indemnity Bill, 1925; Under Secretaries of State Bill, 1929; President of the Board of Trade Bill, 1932.

(*h*) *C. J.* (1920) 106, 141.

**Hybrid bills.**—Certain bills, which clearly belong in part to both categories, are regularly recognized as hybrid bills, and in their passage through Parliament are subjected to a special procedure, which is described below on pp. 465, 490, 494, 505, 532.

## I.—PROCEEDINGS IN THE HOUSE OF LORDS

### INTRODUCTION AND FIRST READING

In the House of Lords it is the privilege of any member of the House to present a bill without notice and without moving for leave to bring it in (*i*). Occasionally, however, previous notice is given. In both cases the first reading of the bill is moved immediately after introduction and the question is put thereon from the woolsack. An order is then made for the bill to be printed. If at the same time a day is appointed for the second reading, an order is made in the minutes of proceedings for the bill to be read a second time on that day; otherwise the bill is entered in the order paper as "waiting for second reading" until such time as a date is appointed.

#### INTRODUCTION WITHOUT NOTICE

A Peer who wishes to present a bill rises in his place at the beginning of public business, before the notices and orders of the day are called on, and, reading the long title of the bill, moves the first reading formally. As soon as the question has been put he hands in a draft to the table. The proceedings on the first reading of a bill presented in this manner are usually formal and there is seldom any discussion on the bill at this stage.

#### INTRODUCTION AFTER NOTICE

Occasionally in the case of bills dealing with a subject of particular interest or importance, notice is given of the introduction of the bill. The usual method by which this is done is for the Peer to hand into the table a notice for a particular date stating that he will call attention to the subject and present a bill. The notice is then inserted in the order paper for that day and takes its place among the notices in the ordinary manner (see p. 245), such a notice not being regarded as a stage of a bill. When on the day appointed the notice is called on, the Peer in whose name it stands explains his motives in presenting the bill and moves the first reading. A debate may then take place, not so much on the merits of the actual bill, the contents of which are not yet available to the House, but rather on the question whether legislation on the subject, as outlined in the introductory speech, is desirable.

Recent instances of the introduction of bills by notice are the Authorized Companies (Liquor) Bill by the Bishop of Chester on 2 March 1893 (*k*), the Motor Vehicles (Compulsory Insurance) Bill by the Earl Russell on

(*i*) 8 Parl. Hist. 1179; Parl. Deb. (1805) 3, c. 42; *ibid.* (1832) 13, c. 1118. By S.O. No. XXXVII the name of the Lord presenting a bill is printed in the minutes.

(*k*) L. J. (1893) 70.

15 July 1925 (*l*), and the Parliament (Reform) Bill by the Marquess of Salisbury on 19 December 1933 (*m*).

#### FIRST READING

**Debated or opposed.**—In the words of S.O. No. XXXVII, bills in the House of Lords "are seldom opposed at the first reading." Although, however, in the vast majority of cases the first reading is agreed to without discussion, debates have taken place upon the first reading, particularly, as has been mentioned above, in the case of bills presented after notice. On rare occasions also, the first reading has been opposed.

In the case of the Parliament (Reform) Bill on 19 December 1933, a reasoned amendment was moved against the first reading, and in the case of the Local Government (England and Wales) Act, 1888, Repeal Bill, 1888, the motion for the first reading was negatived (*n*). The negating of a motion "that the bill be now read the first time" does not technically destroy the bill, and in this case a notice was inserted in the minutes for the first reading on a subsequent date, when the motion was again negatived (*o*). Ordinarily, however, the negating of a motion for the stage of a bill is regarded as an adverse decision by the House upon the bill and no further proceedings upon it are taken.

**Reference of certain bills to Examiners.**—After the first reading, bills are examined in the Public Bill Office with a view to it being ascertained whether they may affect private interests and whether, if so, such private interests should be afforded protection which under the standing orders is granted to petitioners against private bills. If it is found that private interests may be affected, an order is made referring the bill to the Examiners, and until the Examiners have reported, a date cannot be appointed for the second reading nor can the bill be entered in the order paper as awaiting second reading. If the Examiners find that the standing orders relating to private bills are applicable, the bill is treated as a hybrid bill and is subjected to the procedure set out on pp. 490, 494, 505, 532. If, however, the Examiners report that no standing orders are applicable, the bill may proceed on its ordinary course.

The National Gallery (Lane Collection) Bill, 1926, the object of which was to enable the Trustees of the National Gallery to transfer or lend the Lane Collection to the Trustees of the National Gallery of Ireland, was referred to the Examiners (*p*) and, on a report from them that the standing orders were applicable and had not been complied with, the bill was dropped. The Trade Marks (Amendment) Bill was referred to the Examiners on 11 December 1936 (*q*), and on a report from them that the standing orders were not applicable, a date was appointed for the second reading.

**Bills brought from the Commons.**—Bills which have been initiated in the House of Commons and passed through all their stages in that House are brought to the House of Lords by the Clerk of the House

(*l*) L. J. (1924-25) 289.

(*m*) L. J. (1933-34) 39.

(*n*) L. J. (1888) 437.

(*o*) L. J. (1888) 455.

(*p*) L. J. (1926) 109, 161.

(*q*) L. J. (1936-37) 57.

of Commons with a message stating that the Commons have passed the bills. The message is read at the table by the Clerk of the Parliaments, and the first reading of each bill is moved forthwith, usually by the Chairman of Committees. An order is made for the bill to be printed and the Peer who is to take charge of the bill in the House of Lords may give notice of a date for the second reading (*r*), or, in default of such notice, the bill is entered in the order paper as "Waiting for second reading."

The first reading of bills received from the Commons is almost invariably agreed to without discussion. There are, however, instances of a departure from this practice.

The first reading of the Corn Importation Bill in 1846 was opposed (*s*), and debates took place upon the first reading of the Customs Duties (No. 1) Bill in 1846 (*t*), the Copper and Lead Duties Bill in 1848 (*u*), the Military Lands Bill in 1900 (*a*), the Motor Cars Bill in 1903 (*b*), and the Irish Free State (Agreement) Bill in 1922 (*c*). On the occasion of the first reading of the Representation of the People Bill on 11 December 1917, an explanatory statement was made by Viscount Peel, who was in charge of the bill (*d*).

**Money Bills under the Parliament Act.**—Bills which have been certified by the Speaker of the House of Commons as Money Bills under the Parliament Act, 1911, bear an endorsement to that effect on the title page and are so recorded in the minutes of proceedings of the House of Lords at the time of their introduction. Should the bill be received from the House of Commons in dummy, which occurs when the interval between the passing of the bill in the Commons and its introduction in the Lords has not been long enough to enable a fair print of the bill, as finally passed by the Commons, to be made, the endorsement is recorded in the minutes as soon as the fair print has been received.

**Commons Bills to be dropped if not taken up within twelve sitting days.**—S.O. No. XXXVIII provides that when a bill received from the Commons shall have remained on the table for twelve sitting days without any Lord giving notice of the second reading, such bill shall no longer appear in the order paper and shall not be further proceeded with in the same session, except after eight sitting days' notice of the second reading, provided that such notice shall not be given after the first day of August. By an old parliamentary rule, a bill brought from the other House should not, however, be withdrawn at this or any subsequent stage.

In the case of the Public Worship Facilities Bill on 20 May 1873, which had been removed from the order paper, this standing order was considered

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(*r*) In 1885 a dispute arose as to who should move the second reading of the Medical Relief Disqualification Removal Bill, two peers claiming the right to do so. The House decided in favour of the peer who first gave notice to the Clerk of the Parliaments, L. J. (1885) 414; Parl. Deb. (1885) 300, c. 27.

(*s*) L. J. (1846) 418.

(*t*) L. J. (1846) 441.

(*u*) L. J. (1847-48) 844.

(*a*) L. J. (1900) 173.

(*b*) L. J. (1903) 232.

(*c*) L. J. (1922) 77.

(*d*) L. J. (1917-18) 293.

nd dispensed with (e). A similar motion to dispense with the standing order in respect of the Copyhold Enfranchisement Bill in 1886 was, however, objected to and negatived, it being stated on this occasion that there was no precedent for the motion except that of 1873 (f). The standing order was again dispensed with on 6 July 1895, when a motion was moved that S.O. No. XXXVIII be considered and dispensed with and that the Local Government Act, 1894 (Stock Transfer) (No. 2) Bill be read the second time (g), and since then similar motions have been not infrequently agreed to. On 17 November 1908, so much of the standing order as provides that the eight sitting days' notice shall not be given after the first day of August was dispensed with in relation to the Local Registration of Title (Ireland) Amendment Bill, and an order was made appointing a date for the second reading after the expiry of the eight days (h).

**Successive stages of a bill to be taken on successive dates.**—No two stages of a bill may be taken on one day. S.O. No. XXXIX provides that "No bill shall be read twice the same day; no committee of the whole House shall proceed on any bill the same day the bill is committed for the first time; no report shall be received from any Committee of the whole House the same day such committee goes through the bill, when any amendments are made to such bill; . . . and no bill shall be read the third time the same day that the bill is reported from the committee." Consequently, if it is desired to take more than one stage of a bill on one day, this standing order must be suspended and notice of the proposed suspension must be given (S.O. No. LIV). The passage of a bill with unusual expedition, both in the House of Lords and the House of Commons, is described below on pp. 559-61.

## SECOND READING

The second reading of a bill is the stage at which the general principles of the bill are considered. As soon as the order for the second reading is called by the Clerk of the Parliaments, the Peer in charge of the bill explains its purposes and the manner in which it achieves them. At the conclusion of his speech the question "that this bill be now read a second time" is proposed from the woolsack and a debate may ensue. It is irregular at this stage to examine minutely the details of the clauses, which can be discussed more properly in committee. Frequently, however, an indication is given of the directions in which, in the opinion of the speaker, the bill requires amendment and of the general nature of amendments which he will propose.

### METHODS OF OPPOSITION TO SECOND READING

A bill may be opposed on second reading in three ways.

**Delaying amendment.**—The most usual method is by an amendment to postpone the second reading until after the end of the session, the formula for this amendment being to leave out the word "now" and

(e) L. J. (1873) 375.

(f) L. J. (1886) 261.

(g) L. J. (1895) 267.

(h) L. J. (1908) 402.



add at the end of the motion "this day six (or three) months." Notice is generally given in the order paper of this amendment and the mover of it usually, though not invariably, if he wishes, speaks after the mover of the motion for the second reading. An amendment of this kind has, however, been moved without previous notice. As soon as the amendment has been moved it is proposed from the woolsack, and the question before the House then is that the word "now" stand part of the motion. A decision on this question is usually decisive of the fate of the bill. If the amendment be withdrawn or if it be defeated on a division, the original question is put "that this bill be now read a second time" and agreed to without further discussion. If, however, as a result of a division the word "now" is omitted, the addition of the words "this day six (or three) months" is put and agreed to as a natural consequence of the first decision.

An instance of a departure from the ordinary procedure in this respect occurred on the second reading of the Sheriff Court Houses (Scotland) Amendment Bill on 22 July 1884 (i). An amendment having been moved in the usual form, on a division being taken on the question whether the word "now" stand part of the motion it was resolved in the negative. As, however, the majority in the division was very small, the question was then put "that this bill be read a second time this day six months" and a further division being taken, it was again resolved in the negative and an order was made for the second reading on the following Thursday, on which day it was agreed to without a division.

**Reasoned amendment.**—The second method by which a bill may be opposed on second reading is by means of a reasoned amendment, notice of which is always given. The main question being "that this bill be now read a second time," the usual form of the amendment is to leave out all the words after "that" for the purpose of inserting words to the effect that the House declines to proceed with the bill for certain specified reasons, or until further information upon the subject matter of the bill from specified sources has been made available (k).

**Opposing without moving amendment.**—The third method of opposition is by challenging a vote on the motion for the second reading. It not infrequently occurs that, although no notice of opposition has been given in advance, objection to the measure transpires in the course of debate and the motion is opposed and may be negatived. Strictly, in theory, when this occurs the second reading is only negatived for that particular day, but in practice it is usual to treat it as a rejection of the bill, which is thenceforward removed from the order paper. It could, however, be reinserted at the request of the Peer in charge of it.

**Several amendments moved on Second Reading.**—When notice has been given of several amendments to the second reading of a bill, so far as is possible, the question is framed on each amendment successively in such a way that a decision upon it will not rule out the moving of the subsequent amendments, since it is a rule that when once

(i) L. J. (1884) 355.

(k) L. J. (1850) 284; *ibid* (1851) 201; *ibid*. (1852-53) 279; *ibid*. (1856) 337, 543  
In 1833 the opinion of the Judges was sought, L. J. (1833) 613.

the House has agreed that certain words shall stand part of the question it is irregular to propose any amendment to those words, as the decision of the House has already been pronounced in their favour. The principle is the same as that which guides the chairman when the House is in committee in cases where several amendments are handed in at the same place in a bill (see p. 393). It is, however, not usual in the House of Lords, when several amendments stand upon the order paper, for discussion and decision upon each to be taken successively. The prevailing practice is that, by arrangement made unofficially, the whole discussion takes place upon the first amendment, the Peers in whose names the subsequent amendments stand speaking upon it and indicating the reasons for which they prefer their own amendments. When the debate is concluded the question is put on each amendment successively or upon so many of them as must be disposed of before a positive decision is reached. This procedure, though not in strict consonance with the general principle that debates must be relevant to the immediate question before the House, has the merit of convenience. Time is not wasted in the discussion of amendments which may command little support and the House is enabled to hear all points of view before having to make any decision.

**Motion for rejection of bill.**—A form of opposition to the second reading of a bill which was formerly common but which would now be very exceptional—if indeed the procedure is not obsolete—is by a motion that the bill be rejected. This is considered to be a more summary manner of registering disapproval of a bill than the methods mentioned above, and the only cases of its use in recent years were cases of an unusual character.

On 31 January 1887, an amendment was carried against the second reading of the Women's Suffrage Bill and the bill was ordered to be read a second time that day six months. Owing to the length of the session, Lord Denman, who had introduced the bill, took the opportunity on 30 August of again moving the second reading, contending that the House had ordered it for that day (*l*). The previous question was moved and carried, but in the meantime Lord Denman had introduced a No. 2 Bill, whose objects were the same as those of the original bill. The second reading was moved on 13 September, and without any debate the bill was ordered to be rejected (*m*). A similar course was taken on 1 May 1902, when, on the second reading of the Divorce Bill, the Lord Chancellor stated that in his opinion the provisions contained in the bill were of an improper nature to be submitted to the House, as virtually doing away with the marriage tie, and moved that the bill be rejected (*n*).

#### SECOND READING AGREED TO WITH RESOLUTION

In addition to the moving of reasoned amendments in opposition to the second reading of a bill, it is also in order to move reasoned amendments in support of the second reading. These are moved with the object of inviting the House to put on record a particular point of view in assenting to the measure.

(*l*) L. J. (1887) 19, 435.

(*m*) L. J. (1887) 449.

(*n*) L. J. (1902) 160.

On 8 October 1924 an amendment was moved to the motion "that the bill be now read a second time" to insert after the word "that" the words "this House having taken note of the opinion expressed in Parliament and elsewhere in connection with the passage into law of the Irish Free State (Agreement) Act, 1922, by the members of His Majesty's Government, etc., resolves that" (o); and on 20 July 1925 an amendment similar in form was moved on the second reading of the Teachers (Superannuation) Bill regretting certain features of the bill, but supporting the second reading (p). On 8 May 1934, on the second reading of the Parliament (Reform) Bill, notice was given by Lord Rockley of an amendment supporting the second reading, but regretting that it did not include a provision for the creation of life peerages. This amendment was, however, not moved, the House having resolved by a decision on a previous amendment that the bill be now read a second time.

**Resolution moved on the order of the day being read.**—An unusual procedure was followed on the occasion of the second reading of the Army Regulation Bill on 31 July 1871. On the order of the day for the second reading being read, the Duke of Richmond moved a resolution to the effect that the House, before assenting to the second reading desired to express its opinion that the interposition of the executive during the progress of a measure submitted to Parliament in order to attain the principal object of the measure was strongly to be condemned (q). The resolution was carried after a division, and the second reading of the bill was then moved.

#### COUNSEL HEARD

Counsel have been heard upon the second reading of a bill in cases where the interests of particular parties affected have been considered to require special representation (r).

#### COMMITTAL

As soon as a bill has been read a second time it is ordinarily committed to a Committee of the whole House without question put. The date for the committee may be appointed at the time, in which case the bill is entered on the order paper for committee under that date or, if no date be appointed, it is entered in the list of bills in progress as "Waiting for Committee."

#### COMMITTEE NEGATIVED

In the case of Supply Bills, such as the Finance Bill and Consolidated Fund Bills, the committee stage is often dispensed with. In order to effect this, the question is put after the second reading "That this bill be committed" and, the non-contents alone responding to the challenge, the question is resolved in the negative. The committal of the bill is then negatived and the bill awaits third reading. (For "Money" bills under the Parliament Act, see p. 777.) This practice has been applied to other

(o) L. J. (1924) 362.

(p) L. J. (1924-25) 296.

(q) L. J. (1871) 609.

(r) Cotton Factories Bill, L. J. (1818) 662; Municipal Corporations Bill, *ibid.* (1835) 329; Jamaica Government Bill, *ibid.* (1839) 446; Newfoundland Fisheries Bill, *ibid.* (1890-91) 158. See debate on Australian Colonies Bill, Parl. Deb. (1850) 111, c. 943. And for the hearing of counsel upon the second reading of bills of pains and penalties, disabilities or disfranchisement, see p. 502 and the Queen's Degradation Bill, L. J. (1820) 282.

bills beside Supply bills with a view to saving time over bills to which by general consent there is no desire from any quarter of the House to propose amendments.

A proposal to negative the committal of the Fishery Board (Scotland) Bill on 16 August 1882 (*s*), was objected to on the ground that an opportunity should be afforded for amending the bill in committee and on the question, whether the bill be committed, it was resolved in the affirmative.

#### BILL REFERRED TO SELECT OR JOINT COMMITTEE

If it is desired that a bill should, instead of being committed to a Committee of the whole House, be referred to a select committee or a joint committee of both Houses, a motion to that effect is made immediately after the second reading and, if carried, the bill is referred accordingly (*t*).

This procedure is adopted in cases where the bill requires a more minute investigation than it can receive on the floor of the House and where, before coming to a decision upon it, it is considered advisable to hear the evidence of witnesses. If the bill is referred to a joint committee a message is sent to the House of Commons informing them and desiring their concurrence.

#### CONSOLIDATION BILLS

It is usual at the beginning of a session to set up a Joint Committee on Consolidation Bills. When this is done any consolidation bill is referred to this committee after second reading without question put.

#### INSTRUCTIONS

On the order of the day being read for the House to be put into committee on a bill, the opportunity occurs of moving an Instruction to the committee. Instructions are of two kinds, permissive and mandatory.

**Permissive Instructions.**—The object of a permissive instruction, which is the more ordinary form, is to confer on the committee authority to do something which, without the instruction, they would have no power to do, for example, to divide a bill into two bills (*u*), to consolidate two bills into one (*a*), or to extend the scope of a bill (*b*). Instructions of this kind merely confer on the committee the power to take the course of action specified, leaving it to the discretion of the committee whether they exercise the power.

**Mandatory Instructions.**—The object of mandatory Instructions is to define the course of action which the committee must follow. This form of instruction is often moved at the conclusion of the second reading,

(*s*) L. J. (1882) 425.

(*t*) L. J. (1897) 33; *ibid.* (1898) 80; *ibid.* (1899) 117. A bill has been committed to a Select Committee on another bill, L. J. (1852) 172; *ibid.* (1860) 70. The London Bridge Bill was referred to a select committee after the third reading had been moved, L. J. (1878-79) 273.

(*u*) L. J. (1847) 73; *ibid.* (1852-53) 289; *ibid.* (1919) 310.

(*a*) Betting by Infants Bill and Borrowing (Infants) Bill consolidated into Betting and Loans (Infants) Bill, L. J. (1890-91) 158.

(*b*) Seats for Shop Assistants Bill, L. J. (1899) 304; Colonial Marriages Bill, L. J. (1906) 181.

to which assent may have been given with the knowledge that such an instruction would be moved.

Mandatory Instructions were moved on 5 August 1833, to omit all such clauses in the East India Charter Company's Bill as related to the constitution and powers of the Governments of the several Presidencies; on 25 July 1839, to omit the town of Galway from the schedule to the Municipal Corporations (Ireland) Bill; and on 11 June 1858, to amend the Property Qualification Bill by introducing clauses rendering the members of both Houses of Parliament liable to arrest for debt under the judgment of a court of competent jurisdiction and by altering the title accordingly (*c*). On 11 June 1874, on the order of the day being read for the House to be put into committee upon the Supreme Court of Judicature Act (1873) Amendment Bill, a detailed resolution was moved concluding with an instruction to the committee to amend the bill in accordance with the resolution (*d*).

Mandatory instructions have occasionally been moved in the case of private bills (see p. 962) *n.* (*k*).

**Ground of objection to an Instruction.**—In 1836 a permissive instruction moved to the committee on the Municipal Corporations (Ireland) Bill was objected to on the ground that it was irregular to move an Instruction in respect of a bill received from the Commons (*e*). A precedent was however quoted in favour of the instruction, namely, an instruction moved to the Bank of Ireland Bill in 1808 (*f*), and the motion was carried. Objection was also taken to the moving of an instruction without previous notice to the committee on the Property Qualification Bill in 1858 and the instruction was negatived (*g*).

An instruction was moved on 29 July 1919 to the committee on the Ministry of Transport Bill, which originated in the House of Commons, to enable them to divide the bill into two bills (*h*). This proposal was objected to on its merits and it was also stated that no precedent could be found for so dividing a bill which had been received from the Commons. Although the defeat of the Instruction on a division being taken cannot in itself be said to preclude the possibility of a bill being divided in the second House (since the motion was not ruled out of order), it is clear that considerable technical difficulties would arise if the course were adopted. The Government of India Act, 1935, was, shortly after it had received the Royal Assent, and before it had come into operation, divided, by a separate Act specially passed for the purpose, into two Acts, one relating to India and the other to Burma (see Government of India (Reprinting) Act, 1935).

## COMMITTEE STAGE (COMMITTEE OF THE WHOLE HOUSE)

When the order of the day has been read for the House to be put into committee on a bill, if there is no instruction to be moved, the Peer in charge of the bill moves "That the House do now resolve itself into committee upon the said bill." It not infrequently happens that a debate takes place upon this motion, advantage being taken of the opportunity

(*c*) L. J. (1833) 551; *ibid.* (1839) 532; *ibid.* (1857-58) 237.

(*d*) L. J. (1874) 243.

(*e*) L. J. (1836) 151.

(*f*) L. J. (1806-08) 752.

(*g*) L. J. (1857-58) 237.

(*h*) L. J. (1919) 310.

by Peers who were unable to speak upon the second reading or by Peers who wish to indicate the general tenor of the amendments which they will subsequently move.

The motion may be opposed by reasoned amendment (*i*) or by an amendment to postpone the committee stage (*k*), though opposition to this motion is of infrequent occurrence.

On 4 August 1924, on the order of the day being read for the House to be put into committee on the Housing (Financial Provisions) Bill, a resolution was moved to the effect that the House, before going into committee, desired that an immediate inquiry be set up as to the possibility of achieving the objects of the bill by the use of materials other than those contemplated in the measure. The resolution was agreed to and the House then went into committee on the bill (*l*).

#### AMENDMENTS

In the case of controversial bills it is usual to allow an interval to elapse between the second reading and committee stage in order to give time to members of the House to frame amendments. Amendments relating to each bill are printed on separate papers as soon as they are handed in and are circulated with the minutes of proceedings, the amendments to be moved by each Peer being grouped under his name. When there are several lists of amendments they are marshalled, or arranged in the order in which they will be moved, on the day preceding the date appointed for the committee.

**Rules as to amendments.**—There are certain rules as to the arrangement of amendments. Amendments may be handed in at any time after the second reading, but, on the committee stage, previous notice is not obligatory. In the case of amendments of any importance, however, it is obviously for the convenience of the committee that previous notice should have been given. Where more than one amendment is handed in for the same place in the bill, precedence is given to the Peer who first gave notice of his amendment. Amendments must be relevant to the subject matter of the bill and of the clause to which they are proposed. They must not be of a frivolous nature, nor must they be inconsistent with a previous decision of the committee on the same question. The admissibility of an amendment, however, can only be decided by the House itself in committee, there being no authority which can in advance rule an amendment as out of order. The officers of the House would draw attention to an amendment which appears to contravene the accepted principles of admissibility and the matter would be discussed in the committee. An amendment to leave out and insert words, where it occurs at the same place in a bill as an amendment to leave out words only, takes precedence. All amendments to a clause are considered before an amendment to leave out the entire clause, and amendments to a proposed new clause are considered before the new clause itself is proposed. An amendment to insert a new clause is con-

(*i*) Agricultural Labourers' Holidays (Scotland) Bill, L. J. (1887) 419.

(*k*) Smoke Nuisance Abatement (Metropolis) Bill, L. J. (1887) 253.

(*l*) L. J. (1924) 334.

sidered at the place in the bill where the new clause should be inserted. An amendment, once it has been moved, can only be withdrawn by the leave of the committee, which must be unanimous.

#### PROCEEDINGS IN COMMITTEE

As soon as the motion that the House do resolve itself into committee has been agreed to, the Lord Chancellor leaves the woolsack and the Lord Chairman takes his place at the table and presides over the committee.

**Postponement of Title and Preamble.**—The first question put by the Lord Chairman is that the title be postponed, and this is followed by the question that the preamble be postponed. The preamble and title of the bill are thus considered after the clauses and schedules have been disposed of, and any amendment to them which is consequential upon changes which have been made in the clauses of the bill can then be made.

The motion to postpone the preamble, in cases where the bill contains one, is ordinarily agreed to without discussion; on 29 June 1869, however, the motion to postpone the preamble to the Irish Church Bill was opposed by Earl Grey, who stated that it was competent and sometimes convenient to consider the preamble before the clauses. Lord Cairns replied that if the committee agreed to a preamble in the expectation of clauses that were to follow and then decided upon the clauses in a contrary sense, there would be a preamble inconsistent with the clauses, which seemed a sufficient reason for adhering to the usual practice, and the motion for postponement was agreed to (*m*).

Preambles have been omitted in committee (*n*) and also amended (*o*), but no precedent exists for the insertion of a preamble in a bill where none exists.

Notice was given of an amendment to insert a preamble on the committee stage of the Government of India Bill in 1935 and the amendment was circulated. Representations having been made, however, that the amendment would probably be ruled out of order, the amendment was not moved, but an amendment ingeniously drafted to take its place was moved to the first clause of the bill. During the committee stage, which extended over several days, a further amendment was handed in to insert a preamble to be moved after the clauses and schedules had been disposed of. A discussion took place upon the admissibility of this amendment in which the Lord Chancellor stated his opinion that though no precedent existed for such a course the committee could, if it was considered desirable, adapt its procedure to meet circumstances as they arose, and that while the lack of precedent and the fact that such a course would not be admitted in the House of Commons might not be considered sufficient grounds for refusing to discuss the amendment, those considerations would be relevant factors in determining whether a new precedent should be created. Lord Salisbury emphasized the elasticity of procedure and stated that it was clear that discussions on a preamble should be taken, if at all, at the end of a bill. He urged that there were special reasons for the insertion of a preamble in this case since an unusual

(*m*) L. J. (1868-69) 408.

(*n*) Petroleum (Amendment) Bill, L. J. (1928) 141.

(*o*) Expiring Laws Continuance Bill, L. J. (1930-31) 66; Judiciary (Safeguarding) Bill, *ibid.* (1933-34) 107.

course had already been taken in the bill, in so far that while the bill itself contained no preamble, it repealed the whole of the existing Government of India Act except the preamble, which was left "floating." He went on to state, however, that a new precedent should only be created by general consent. In view of the turn the discussion had taken, the amendment was not moved (p).

**Clauses.**—The clauses of the bill are then considered in order, the Lord Chairman first calling on the amendments to each clause and, when those have been disposed of, putting the question that the clause, or the clause as amended, stand part of the bill (q). An amendment to leave out a clause may be placed on the paper, but is not moved in this form.

**Postponement of Clauses.**—A clause may be postponed, on a motion being made to that effect.

Clause 1 of the Church of England Assembly (Powers) Bill, 1919, was postponed until after the consideration of the schedules, the reason for the postponement being that Clause 1 consisted largely of definitions which could be more conveniently discussed after the substantive clauses had been considered (r). On 8 December 1927 a motion was agreed to that Parts I and II of the Landlord and Tenant Bill be postponed until after the consideration of Part III (s).

On 21 January 1930 a proposal to postpone the consideration of Clauses 1 to 19 of the Unemployment Insurance (No. 2) Bill until after the consideration of Clause 20 was carried, although objected to on the ground that it was contrary to the custom of Parliament to postpone the effective clauses until after a subsidiary clause (t).

A proposal was made during a discussion in committee on Clause 8 of the Representation of the People Bill on 17 January 1918 to postpone the consideration of the clause in order to afford an opportunity for a new clause to be drafted in its place. Doubts were expressed as to whether a clause could be postponed after consideration of it had been entered upon, though it was urged that in this case the course of postponement would be a convenient one. After some discussion on the point the committee proceeded with the clause and no motion for its postponement was made.

**House resumed.**—If the committee stage is not completed at one sitting, the Lord Chairman puts the question "That the House be resumed," which, being carried, he leaves the chair and the Lord Chancellor resumes his seat on the woolsack. The Chairman then moves that the House be again put into committee on a future day. But the House has been resumed in order to take other business and put again into committee later on the same day (u).

**Bill reported.**—As soon as the clauses and schedules have been disposed of, the Lord Chairman proposes the questions "That this be

(p) 10 July 1935, H. L. Deb. (1934-35) 98, c. 233-7.

(q) The marginal notes to clauses and the cross headings in the bill are not technically part of the bill and are not open to amendment. See Parl. Deb. (1906) 166, c. 1085. The punctuation is also technically not part of the bill. Under s. 14 of the Army and Air Force (Annual) Act, 1925, copies of the Army Act shall be reprinted with such alterations in cross headings as the Clerk of the Parliaments may certify to be necessary or expedient in consequence of amendments made in the Army Act.

(r) H. L. Deb. (1919) 35, c. 430.

(s) L. J. (1927) 309.

(t) L. J. (1929-30) 179.

(u) L. J. (1917-18) 222; H. L. Deb. (1917-18) 26, c. 474.



the preamble of the bill " (if there is one) and " That this be the title of the bill " and amendments to the preamble and the title can be moved. He then puts the question to report the bill with or without amendment to the House whereupon he leaves his seat at the table and the Lord Chancellor resumes his place on the woolsack.

The bill is then reported by the Lord Chairman to the House accordingly (a), and if it has been substantially amended an order is made for it to be reprinted as amended.

On 11 July 1867 an amendment was moved to the motion that the Transubstantiation Declaration Abolition Bill be now reported, to leave out the word " now " and add at the end of the motion " this day three months." This amendment was negatived and is the only recorded instance of opposition to this motion.

#### RECEPTION OF REPORT

If no amendment has been made in committee, the Peer in charge of the bill moves forthwith " That this report be now received," and a date may be appointed for the third reading. If, however, the bill has been amended, this motion can only be made on a subsequent date.

#### RECOMMITTAL

A bill which has been referred to a select committee is, after being reported by that committee, committed to a Committee of the whole House (b). The amendments proposed by the select committee are considered *seriatim* and may be agreed to or disagreed to and further amendments may be made to the bill.

Since a bill is usually reprinted in the form in which it emerges from a select committee, a convenient procedure has been adopted whereby when the bill comes before the Committee of the whole House, the amendments proposed by the select committee are agreed to *en bloc*, the proceeding being formal only, and the bill is again recommitted to a Committee of the whole House. In this way the moving of further amendments to the bill is simplified, especially in cases where it is desired to move amendments which conflict with those proposed by the select committee.

Besides bills which have been referred to a select committee, any bill may be recommitted to a Committee of the whole House or may be recommitted in respect of certain clauses (c). This course is adopted in cases where it is considered that the bill, or certain clauses of it, require further examination and that it is desirable to discuss it with greater freedom and in more detail than can obtain in the normal subsequent stages.

#### REPORT OF AMENDMENTS

On the order of the day being read for receiving the report of the amendments made to a bill in committee, the Peer in charge of the bill

(a) In the absence of the Chairman of Committees leave has been given to another peer to report the bill, L. J. (1859) 35.

(b) For a case of a bill, which had been considered by a Committee of the whole House, referred on report to a select committee, see L. J. (1894) 181.

(c) Irish Land Law Bill, L. J. (1887) 212.

moves "That this report be now received." The motion may be objected to and debated.

On 23 June 1886 an amendment was moved to the motion for receiving the report of amendments to the *Shop Hours Regulation Bill* to defer further proceedings on the bill till the evidence on the subject taken before a select committee of the House of Commons had been communicated (*d*).

#### OPPOSITION TO MOTION THAT REPORT BE RECEIVED

The motion that the report of the amendments be now received may be objected to and may give rise to a debate (*e*), and an amendment may be moved to postpone the report or a reasoned amendment may be moved in opposition to the motion (*f*).

#### AMENDMENTS ON REPORT

When the motion has been agreed to, an opportunity occurs for moving further amendments to the bill. Notice of such amendments is not obligatory, but it is unusual for amendments to be moved on the report stage without previous notice given and they are circulated and marshalled in the same manner as for the committee stage. The amendments moved on the report stage relate principally but not exclusively to matters which have been discussed in committee and which the committee agreed to defer to the report stage with a view to allowing time in the interval between the two stages to reach a settlement or to enable passages of the bill to be redrafted.

Drafting amendments may also be made to remove any inconsistencies that may have become apparent as a result of the amendments made in committee. The bill is not gone through on the report stage clause by clause, but the amendments are called on by the Lord Chancellor from the woolsack in the order in which they have been marshalled, the question on the amendments being "That these words stand part of the bill" and not, as in committee, "That these words stand part of the clause."

As soon as the amendments moved on report have been disposed of an order is made, if they have been substantial, for the bill to be reprinted as amended and a date may be appointed for the third reading.

#### THIRD READING

The third reading of a bill is the stage of final consideration. In the case of a non-controversial bill the proceedings are usually brief and confined to the formal moving of the motion "That the bill be now read the third time" and the putting of the question thereon from the woolsack. This is followed by the motion "That the bill do now pass."

#### OPPOSITION TO THIRD READING

In the case of bills which have given rise to considerable discussion on the previous stages, a debate may take place on the third reading, in

(*d*) L. J. (1886) 309.

(*e*) Land Drainage Bill, 27 May 1930; L. J. (1929-30) 382.

(*f*) Shop Hours Regulation Bill, 23 June 1886; L. J. (1886) 309.

which the bill is finally reviewed. The motion for the third reading may be opposed and amendments of a reasoned or a delaying character may be moved against it in the same way as upon the second reading.

#### AMENDMENTS ON THIRD READING

When the motion has been agreed to further amendments may be moved to the bill. These are not limited to drafting or consequential amendments but previous notice of them in the form in which they will be moved is required by S.O. No. XXX (*g*).

#### FURTHER PROCEEDINGS AFTER THIRD READING

If the amendments are not disposed of on the same day as the third reading the "further proceedings after the third reading" are appointed for a subsequent date, when the debate on the amendments is resumed (*h*).

On 10 November 1820, after the third reading of the Queen's Degradation Bill had been agreed to on a division, a motion that the further consideration of the said bill be put off to this day six months was resolved in the affirmative (*i*).

#### PASSING OF BILL

The motion "That the bill do now pass" is almost invariably treated as a formality, but instances have occurred where it has been opposed.

On 6 December 1906 the motion that the Education (England and Wales) Bill do pass was carried after a division had been challenged upon it (*k*), and on 9 December 1908 an amendment was moved to defer the passing of the Local Authorities (Admission of the Press) Bill till this day three months (*l*). The amendment was rejected. The motion to pass the Diplomatic Relations (Court of Rome) Bill in 1848 (*m*) was objected to, and that to pass the Selling and Hawking Goods on Sunday Bill on 1 June 1866 (*n*) was objected to and negatived.

In 1887 amendments were made on the third reading of the Licensed Premises (Earlier Closing) (Scotland) Bill, and an order was made that the question that the bill do pass be put the following day (*o*).

#### PRIVILEGE AMENDMENTS

On the third reading of bills originating in the House of Lords any amendments which may be necessary in order to avoid infringement of the privileges of the House of Commons with regard to the control of public money are made formally. The motion is made "That the privilege amendments be agreed to" without stating their nature. These amendments usually consist of the omission from the bill of such words as affect financial charges upon the people or upon local rates. In the

(*g*) This standing order came into force on 8 July, 1930. For the previous practice, see H. L. Deb. (1919) 36, c. 819; *ibid.* (1919) 38, c. 476.

(*h*) Tenants Compensation Bill, L. J. (1890) 555.

(*i*) L. J. (1820) 671.

(*k*) L. J. (1906) 448.

(*l*) L. J. (1908) 463.

(*m*) L. J. (1847-48) 99.

(*n*) L. J. (1866) 352.

(*o*) L. J. (1887) 421.

fair copy of the bill printed for the House of Commons blank spaces are left for these words and in the prints circulated to Members the words are enclosed in brackets and underlined. They are reinserted as amendments by the House of Commons.

Occasionally in a bill in which it is difficult to detach the precise passages which might infringe the privileges of the Commons, a clause or subsection is inserted on the third reading to the effect that nothing in the bill shall affect the incidence of rates or taxes. The clause or subsection is then struck out in the House of Commons. The subject of privilege amendments is more fully dealt with on pp. 769-75.

#### BILL SENT TO THE COMMONS

When a bill which originated in the House of Lords has completed all its stages in that House, a fair print of it is sent down to the House of Commons with a message desiring their concurrence (see p. 544).

#### CONSIDERATION OF COMMONS AMENDMENTS, ETC.

The further history of bills after passing through both Houses, the consideration by one House of the amendments made by the other, the insistence or acceptance by the House of amendments to which the other has disagreed, and the final stages of agreement upon bills are fully explained in the portion of this chapter dealing with the House of Commons, and since the proceedings of both Houses with regard to them are identical, need not be further enlarged upon (see pp. 545-555).

### II—PROCEEDINGS IN THE HOUSE OF COMMONS

#### INTRODUCTION AND FIRST READING

In the House of Commons there are three ways in which a bill may be introduced—

It may be brought in upon an order of the House.

It may be presented without an order under the provisions of S.O. No. 32 (2).

It may be brought down from the House of Lords.

#### BILLS BROUGHT IN UPON AN ORDER OF THE HOUSE

Under the old procedure the normal method of presenting bills was upon an order of the House, but in modern times this has become practically confined to bills founded upon the report of resolutions from a Committee of the whole House, and to bills introduced under S.O. No. 10. Bills presented under an order may be divided into two classes :

- (1) Bills preceded by certain preliminary proceedings.
- (2) Bills ordered in without any preliminary proceedings.

#### (1) BILLS PRECEDED BY CERTAIN PRELIMINARY PROCEEDINGS

##### (i) Bills originating in Committee

**Money Bills.**—A certain class of bills, the main object of which is the expenditure of money or the imposition of taxation, must, in

accordance with the requirements of the standing orders regarding charges on the people, originate in Committee of the whole House.

When the resolutions have been reported and agreed to by the House, a bill is ordered thereon, or upon some only of the resolutions (*p*).

Under S.O. No. 64A, passed on 1 February 1938, bills of this class, other than bills required to originate in Committee of Ways and Means, which are presented or brought in by the Government, may be proceeded with in the same manner as bills which involve a charge subsidiary to their main purpose (*q*).

Sometimes the chairman has been directed by the committee to move the House for leave to bring in a bill or bills. Or again, when resolutions have been reported and agreed to, a bill may be ordered in upon some of the resolutions and another bill upon other resolutions (*r*), and two bills have been ordered in upon the same resolution (*s*). Or, after several resolutions have been reported and agreed to, another resolution has been reported separately, directing the chairman to move for a bill pursuant to the said resolutions, on which the chairman immediately proceeded to move for a bill (*t*). When a bill which has been brought in on resolutions reported from a Committee of the whole House is withdrawn, and it is desired to bring in another bill of the same nature, the resolutions on which the first bill was founded are again read, and another bill is ordered, either on all, or some of those resolutions (*u*). Similarly when a bill founded on resolutions has received the Royal Assent, and it is desired to introduce another bill on the same subject, one of the original resolutions has been again read, and the second bill ordered in (*a*).

In this category are included Civil List Bills, which are to make provision for the honour and dignity of the Crown and the royal family. Prior to the ordinary proceedings in Committee of the whole House, a message from the King is received, placing the hereditary revenues of the Crown at the disposal of the House of Commons and requesting them to adopt such measures as may be suitable (*b*). A select committee is appointed to consider this message (*c*), and, after they have reported, a Committee of the whole House, to whom are referred the King's message and the select committee's report, is set up to consider the Acts relating to the Civil List (*d*). Resolutions are then passed in Committee of the whole House (*e*), and upon these resolutions being agreed to by the House the Civil List Bill is introduced (*f*).

(*p*) C. J. (1826) 44; *ibid.* (1867-68) 160, 176; *ibid.* (1890) 198, 263.

(*q*) C. J. (1937-38) 85; Bills introduced under this S.O. are labelled "This Bill was presented under S.O. No. 64A" on the face of the Bill immediately above the title (see also p. 737).

(*r*) C. J. (1825) 471; *ibid.* (1847-48) 981; *ibid.* (1924) 45.

(*s*) C. J. (1873) 249.

(*t*) C. J. (1857-58) 235.

(*u*) C. J. (1856) 126; *ibid.* (1857) 185; *ibid.* (1885) 264, 306; Votes and Proceedings, 3 and 29 May, 1945.

(*a*) Telephone Transfer and Telephone Transfer Amendment Bills, C. J. (1911) 292, 523.

(*b*) C. J. (1910) 171; *ibid.* (1935-36) 123; *ibid.* (1936-37) 171. In 1901 provision for the Civil List was requested in the King's Speech at the Opening of Parliament, though a later message was received in respect of the Queen and other members of the Royal Family, C. J. (1901) 11, 59.

(*c*) C. J. (1901) 71; *ibid.* (1910) 174; *ibid.* (1935-36) 125; *ibid.* (1936-37) 173.

(*d*) C. J. (1901) 149; *ibid.* (1910) 215; *ibid.* (1935-36) 196; *ibid.* (1936-37) 243.

(*e*) C. J. (1901) 171; *ibid.* (1910) 264; *ibid.* (1935-36) 207; *ibid.* (1936-37) 258.

(*f*) C. J. (1901) 180; *ibid.* (1910) 268; *ibid.* (1935-36) 212; *ibid.* (1936-37) 263.

**Other bills.**—In other cases it has been deemed advisable, for particular reasons, to initiate legislation by preliminary discussion in committee as, in 1856, on the subject of education (*g*), in 1858, on the government of India (*h*), and in 1910, on the relations between the two Houses and the duration of Parliament (*i*). In 1867 it was proposed to found the Representation of the People Bill upon resolutions to be previously discussed in committee; but ultimately the bill was brought in without any preliminary proceedings (*k*).

As the House may refer any matters whatever to the consideration of a committee, this course is not inconsistent with any parliamentary principle; but it is open to the objections that it involves a double discussion of the same questions in committee, and that it reverses the accustomed order of proceeding, by giving precedence to the consideration of the details of a measure, instead of to the principle.

When a bill stands for second reading it is out of order to propose resolutions in a committee, having the same legislative objects, until the order for the second reading of the bill is discharged (*l*).

**Army and Air Force (Annual) Bill.**—The Army and Air Force (Annual) Bill, which renders operative for a year the provisions of the Army Act and the Air Force Act, is fully described in Chapter XXV, p. 706; but, in so far as its introduction is concerned, it falls into a category by itself. When the resolutions of the Committee of Supply, which determine the number of men to be maintained during the year for the army, the air force, and the sea services, have been reported and agreed to by the House, the Army and Air Force (Annual) Bill is ordered in (*m*).

If the necessary resolutions are not agreed to by the House upon the same day, the resolution (*n*), or resolutions (*o*), which have been reported and agreed to on a previous day are deemed to have been read again before the bill is ordered in, and are so recorded in the Votes and Proceedings and the Journal.

As the provisions of the Army Act govern the discipline of the Royal Marines, when ashore, it is necessary for the House to agree to the resolution authorizing the maintenance of the men for the sea services, which includes the Marines, before the Army and Air Force (Annual) Bill is introduced.

The bill cannot be said to depend on the resolutions of the Committee of Supply in the same sense as money bills which originate in committee and are directly founded upon the resolutions of that committee. But the passing of the resolutions, determining the number of men, to whom the Army and Air Force Acts apply, is clearly a necessary preliminary to the introduction of the annual bill, which puts those permanent Acts into force; and to this extent the Army and Air Force (Annual) Bill may be regarded as a bill originating in committee.

(*g*) C. J. (1856) 87.

(*h*) C. J. (1858) 135, 235; Parl. Deb. (1858) 149, c. 853, 1164.

(*i*) C. J. (1910) 71, 95. The Parliament Bill, 1911, however, was introduced on a motion for leave, C. J. (1911) 39, 41.

(*k*) Parl. Deb. (1867) 185, c. 214, 1203.

(*l*) Parl. Deb. (1858) 149, c. 1595.

(*m*) C. J. (1932-33) 106.

(*n*) C. J. (1922) 80; *ibid.* (1937-38) 170.

(*o*) C. J. (1921) 66; *ibid.* (1936-37) 183.

## (ii) Bills preceded by Resolutions of the House

Under the earlier practice of the House, the introduction of bills was sometimes preceded by resolutions of the House passed during the current (*p*) or even a former session (*q*).

The Regency Bills of 1789 and 1811 were founded upon resolutions which had been reported from a Committee of the whole House, communicated to the House of Lords, agreed to by them, and afterwards presented by both Houses to the Prince of Wales and the Queen (*r*). On other special occasions resolutions agreed to by both Houses at a conference have preceded the introduction of a bill (*s*).

Sometimes, also, the House has ordered to be read parts of speeches from the throne, messages from the Sovereign, Acts of Parliament, entries in the Journal, reports of committees, or other documents in possession of the House, as grounds for legislation, before the motion is made for leave to bring in a bill (*t*).

On 10 December 1936 a message was read from the King, stating his determination to renounce the throne, and communicating an Instrument of Abdication, which he had executed, and expressing a wish that there should be no delay in giving effect to the Instrument and that all necessary steps should be taken immediately to secure that his lawful successor should ascend the throne. A motion was made that the message should be considered, and, on this motion being agreed to, a bill was ordered to be brought in to give effect to His Majesty's declaration of abdication (*u*).

In the case of the Regency Bill, 1910, a somewhat different procedure was adopted. On 14 June 1910 a message from the King was received respecting a regency, and an address was passed in reply that the House would proceed to provide such measures as would appear best calculated to maintain unimpaired the power and dignity of the Crown. On the following day the Prime Minister moved for leave to bring in the Regency Bill "consequent upon His Majesty's gracious message of yesterday, and the address, passed in reply to that message by the House," and the bill was ordered in (*a*).

On 22 September 1943, a message was received from the King respecting a regency, and an address voted in reply thereto. The subsequent Regency Bill was introduced into the Lords.

## (2) BILLS ORDERED IN WITHOUT ANY PRELIMINARY PROCEEDINGS

**Motion for leave to bring in a bill.**—In the absence of any preliminary proceedings, a motion may be made that leave be given to bring in a bill (*b*). Prior to the passing in 1902 of S.O. No. 32 (2), under which any Member may present a bill without an order for its intro-

(*p*) C. J. (1831) 821.

(*q*) C. J. (1807) 588; *ibid.* (1810-11) 148; *ibid.* (1826-27) 442; *ibid.* (1833) 482; *ibid.* (1843) 65.

(*r*) 27 Parl. Hist. 1122; Parl. Deb. (1810-11) 18, c. 478, etc.; May, Const. Hist. 1, 125 *et seq.*

(*s*) C. J. (1806) 393, 401.

(*t*) C. J. (1826-27) 442; *ibid.* (1836) 639; *ibid.* (1840) 470; *ibid.* (1852) 186; *ibid.* (1867-68) 113; *ibid.* (1876) 47.

(*u*) C. J. (1936-37) 56.

(*a*) C. J. (1910) 171, 174; H. C. Deb. (1910) 17, c. 1321. See also C. J. (1936-37) 83, 85.

(*b*) For a discussion of the procedure in moving for leave to bring in a bill and for cases in which a motion was made "to bring up a bill," see 8 Parl. Hist. 1178.

duction, a motion for leave was the usual method of introducing bills which were not founded on resolutions in committee or of the House.

Though there have been important exceptions in modern times, as in the case of the Parliament Bill, 1911, and the Gold Standard (Amendment) Bill, 1931, this form of procedure is tending to become less frequent, and survives mainly in the modified form under S.O. No. 10.

The practice of the House requires notice to be given of such a motion, but it has been dispensed with in the case of certain bills on the ground of urgency (c).

In moving for leave to introduce a bill a Member may explain the object of the bill and give reasons for its introduction, but, normally, this is not the proper time for any lengthened debate upon its merits. If the motion be opposed, or if there is a likelihood of its being negatived and no further occasion arising for discussion, or if there are grounds of urgency, this opportunity may be taken for a full exposition of the character and objects of the bill; but, except under such circumstances, a prolonged debate on the introduction of a bill can rarely serve any useful purpose, and cannot fail to anticipate the discussion of the principle of the bill proper to the second reading.

A lengthened debate at this stage took place on the Protection of Life and Property (Ireland) Bill and continued over five sittings, from 24 January to 2 February 1881, when it was closed by Mr. Speaker Brand. The introduction of the Government of Ireland Bill occupied four sittings in 1886 and four sittings in 1893; that of the Criminal Law and Procedure (Ireland) Bill, 1886, occupied five sittings, and four further sittings were taken on the motion to give precedence to procedure on the bill.

A notice of motion for leave to bring in a bill has been refused by the Speaker on the ground that it was covered by a bill, the second reading of which had been negatived (d).

If the motion be agreed to, the bill is ordered to be prepared and brought in by the mover and seconder, and by such other Members as may be thought expedient (see p. 492).

This order is ordinarily formal, but on 20 February 1852 Lord Palmerston having carried an amendment to the motion for leave to bring in Lord John Russell's Militia Bill, discussion arose upon the question by whom the bill should be brought in (e).

Amendments have been made or proposed to a question for leave to bring in a bill, either hostile to the motion (f) or to effect the alteration

(c) 3 August 1914, Postponement of Payments Bill; 5 August, Injuries in War (Compensation) Bill; 6 August, Currency and Bank Notes Bill, Electoral Disabilities (Naval and Military Service) Removal Bill; 7 August, Defence of the Realm Bill; 8 August, Special Constables (Scotland) Bill, and Housing (No. 2) (Extension to Ireland) Bill; 25 August, Currency and Bank Notes Amendment Bill and twelve other bills; 26 August, Courts (Emergency Powers) Bill; 9 September, Police Constables (Naval and Military Service) Bill and six other bills; 10 September, Irish Police Constables (Naval and Military Service) Bill and Army Pensions Bill; 3 June 1915, Re-election of Ministers Bill and Ministry of Munitions Bill; 12 October, American Loan Bill; 9 April, 1918, Military Service Bill; 21 September 1931, Gold Standard (Amendment) Bill. See also p. 815.

(d) H. C. Deb. (1912) 38, c. 1754.

(e) Parl. Deb. (1852) 119, c. 876.

(f) C. J. (1852-53) 516; *ibid.* (1861) 65; *ibid.* (1881) 49; *ibid.* (1909) 115.



thereof (*g*). An amendment to postpone proceeding on the motion to that day three months is out of order (*h*).

In the case of the Militia Bill, 1852, referred to above, when the motion was amended on division, the ministers resigned, and a bill was afterwards brought in by the new administration, in conformity with the amended order (*i*).

A motion for leave to bring in a bill, the objects of which are substantially the same as those of a bill upon which the House has come to a decision in the current session, is out of order (*j*) (see p. 491).

**Bills introduced under S.O. No. 10** (see also p. 361).—Under the provisions of this standing order (generally known as "The Ten Minutes' Rule"), motions for leave to bring in bills may be set down for consideration at the commencement of public business on Tuesdays and Wednesdays, and, if set down by the Government, on Mondays and Thursdays also. After the mover has given a brief explanatory statement of the objects of the bill (*k*) and the Speaker has proposed the question, another Member is permitted to make a short speech, but only if he rises to oppose the motion (*l*); he is not, however, obliged to divide the House upon the question (*m*). The Speaker is then authorized by the standing order to put the question on the motion without further debate, or the question that the debate be now adjourned (*n*).

When a Member who had moved for leave to introduce a bill, in response to an appeal by another Member, moved the adjournment of the debate, on the Speaker's suggestion, the motion was by leave withdrawn (*o*).

The practice of introducing bills under this procedure is frequently adopted, more especially by private Members, as it gives early publicity to a controversial measure or one of general interest, which it would not obtain, if it were presented without an order under S.O. No. 32 (2).

The Speaker has refused a motion for leave to introduce a bill on the ground that its provisions would entail a charge on the revenue (*p*), and ruled that no Member should seek to introduce more than one bill under S. O. No. 10 on the same day (Private Ruling of July 1937 (Decision 2154)).

#### METHOD OF PRESENTATION OF BILLS UPON ORDER

When the order of leave to bring in a bill has been granted, or when a bill has been ordered upon the report of a resolution or resolutions, it is presented forthwith, though formerly it might be presented at a subsequent sitting whilst the House was not engaged in the transaction of

(*g*) C. J. (1814-15) 62; *ibid.* (1816) 430; *ibid.* (1851) 205.

(*h*) Parl. Deb. (1858) 151, c. 1242.

(*i*) C. J. (1852) 68, 131.

(*j*) C. J. (1840) 495; Parl. Deb. (1840) 55, c. 553.

(*k*) See Speaker's remarks, H. C. Deb. (1931) 252, c. 1785.

(*l*) Parl. Deb. (1894) 23, c. 225; *ibid.* (1905) 150, c. 362; *ibid.* (1907) 171, c. 687; H. C. Deb. (1938-39) 349, c. 1120.

(*m*) Parl. Deb. (1907) 171, c. 882; H. C. Deb. (1910) 18, c. 202, 364; *ibid.* (1922) 151, c. 391.

(*n*) Parl. Deb. (1905) 148, c. 388; and see also Parl. Deb. (1896) 97, c. 868, where the Speaker refused to put the question for the adjournment of the debate on a motion for leave to introduce a Government bill; and H. C. Deb. (1933) 280, c. 2601.

(*o*) H. C. Deb. (1933) 278, c. 361.

(*p*) H. C. Deb. (1929) 226, c. 216.

business (*g*). The bill must be presented by one of the Members who have been ordered to prepare and bring it in (*r*). The Speaker asks "who will prepare and bring in the bill?" Thereupon the Member in charge reads the names of the Members, concluding with his own name, and, having previously obtained a dummy bill from the Public Bill Office, goes from his place, in pursuance of the order of 10 December 1692, to the bar (*s*). On his name being called by the Speaker, he proceeds to the table, with the customary three bows, and hands the dummy bill to the Clerk of the House, who reads the short title aloud, when the bill is said to have been "received by the House" (*t*).

#### BILLS PRESENTED WITHOUT AN ORDER (UNDER S.O. NO. 32 (2))

The majority of bills, whether introduced by the Government or private Members, are presented, after notice, under the provisions of S.O. No. 32 (2).

Notices of the presentation of bills without an order of the House for their introduction are set down on the notice paper at the commencement of public business, immediately before the notices of motions that may be taken at that time.

When the name of a private Member, who has given notice of presentation of a bill, is called by the Speaker, he brings the dummy bill, which he has obtained from the Public Bill Office, to the Clerk of the House from behind the Chair; and the clerk then reads the short title aloud.

In the case of government bills, the Public Bill Office has previously provided the clerk with the dummy bill, and the Minister, when called by the Speaker, formally moves the presentation, whereupon the clerk reads the short title.

In the case of two bills to prescribe the manner in which the remaining stages of certain bills should be disposed of in the House of Commons the Speaker declined to call upon the Members to present their bills, as the subject matter of the bills should be dealt with by resolution or standing order and not by bill (*u*).

The Speaker also declined to call on a Member to present a bill the object of which was to provide that the Government should introduce legislation on a particular subject in a certain way (*a*), and a bill to deal with the duration of speeches (*b*).

The Speaker has ruled privately that a proposal to combine in the same bill two unrelated subjects, one mainly financial, is not permissible (*c*).

A motion for leave to bring in the Hospital Lotteries Bill, under the Ten Minutes' Rule, was negatived on 19 May 1931 (*d*), and the Member in charge gave notice on 4 June to present the same bill under S.O. No. 32 (2); but

(*g*) C. J. (1865) 373, 376.

(*r*) C. J. (1770-72) 255.

(*s*) C. J. (1688-93) 740 (1692).

(*t*) C. J. (1547-1628) 223 (1604).

(*u*) Parl. Deb. (1908) 190, c. 879.

(*a*) H. C. Deb. (1914) 60, c. 1198.

(*b*) H. C. Deb. (1922) 153, c. 239.

(*c*) Private Ruling, 13 March 1934 (Decision 2058).

(*d*) C. J. (1931-32) 264.

the Speaker declined to allow the presentation, and the notice was removed from the paper.

#### BILLS BROUGHT FROM THE LORDS

A bill brought down from the House of Lords is not necessarily proceeded with in the Commons unless a Member wishes to "take it up," in which case he signifies his intention to do so at the table.

#### FIRST READING AND PRINTING OF BILLS

(1) **Bills presented upon an Order of the House.**—In the case of bills presented upon an Order of the House, S.O. No. 32 (1) provides that the questions "That this bill be now read a first time" and "That this bill be printed" shall be decided without amendment or debate.

The effect of negating the question for the first reading of a bill is that the House merely determines that the bill shall not now be read, and the question may therefore be repeated on a future day (*e*). In practice, however, this procedure may now be regarded as obsolete, and a bill is recorded in the Votes and Proceedings as having been read the first time, and is ordered to be printed, as a matter of course.

(2) **Bills brought from the Lords.**—In the same way, though the provisions of S.O. No. 32 (1) apply also to bills brought from the Lords, in practice, as soon as a Member has signified his intention to the clerk at the table to take up such a bill, it is entered in the Votes and Proceedings as having been read the first time, and is ordered to be printed, without any formal action being taken in the House.

(3) **Bills presented without an Order under S.O. No. 32 (2).**—The need for putting the questions for the first reading and printing of a bill, which has been presented without an order, is expressly waived by S.O. No. 32 (2). After the title of the bill has been read by the clerk at the table, the bill is deemed to have been read the first time and is printed. As a question is not put upon the first reading of a bill presented without moving for leave, the House has not any power to object to its presentation (*f*). (See p. 358).

#### READING OF BILLS

The first reading of a bill, the order for printing, and the appointment of a day for second reading, are taken together as one formal stage, which is recorded in the Votes and Proceedings.

As soon as the House has ordered a bill to be now read the first time, its short title as entered upon the notice paper and endorsed on the bill (*g*) is read by the clerk. This is taken to be a sufficient compliance with the

(*e*) The County Elections Bill, 1852, was twice negatived, C. J. (1852) 174,201; Notices of Motions, sess. 1852, p. 396.

(*f*) Parl. Deb. (1907) 171, c. 1525; H. C. Deb. (1911) 32, c. 2706; *ibid.* (1914) 60, c. 1198; *ibid.* (1916) 84, c. 1696.

(*g*) This short title is altered during the passage of the bill if amendments to the bill render that course desirable, C. J. (1856) 309; *ibid.* (1857) 382, 384; *ibid.* (1861) 373; *ibid.* (1880) 48, 360, 398; *ibid.* (1933-34) 254.

order of the House, and attempts to obtain that a bill should be read to the House clause by clause, have been overruled by the Speaker (*h*).

#### APPOINTMENT OF SECOND READING

After a bill has been read the first time, the next stage is the second reading, which is usually, though not necessarily, taken on a future day (*i*).

**Bills originating in the Commons.**—When a bill, originating in the Commons, has been presented with or without an order of the House, on the Speaker's request, the Member names a day for its second reading, the day named is announced by the Speaker, and the bill is then entered in the Votes and Proceedings as having been ordered to be read a second time upon that day.

No formal question is now put that the bill be read a second time upon a future day, and there is consequently no opportunity to move an amendment, proposing to add "upon that day six months" (*j*).

**Bills brought from the Lords.**—When a Member informs the clerk at the table that he intends to take up a bill brought from the Lords, he names a day for second reading, and an entry is made in the Votes and Proceedings, ordering the bill to be read a second time upon that day.

#### PREPARATION OF BILLS

**Form of a Bill.**—A public bill is in the form of a draft statute, and contains the following parts, not all of which, however, are essential :

(1) *Citation and Short Titles.*—The citation title, under which the Act is cited amongst the statutes, is usually set out in the last clause—"This Act may be cited as the . . . Act, 19. . (*k*). Occasionally the short title at the head of the bill, and the title set out in the citation or short title clause, are not identical, as in the case of the Consolidated Fund (Appropriation) Bill, which is always enacted as the Appropriation Act. By the Short Titles Act, 1896, short titles were given to the public general acts, passed between 1707 and 1896, which did not already possess them, and groups of acts were given collective titles (*l*).

(2) *Long Title.*—The long title sets out in general terms the purposes of the bill, and when the term "title" is used without qualification it usually refers to the long title.

Both the long title and the short title are amended, if amendments to the bill make it necessary.

(3) *Preamble.*—The purpose of a preamble is to state the reasons and intended effects of the proposed legislation. Though a preamble is not often incorporated now in a public bill, it is still employed in bills of great

(*h*) Parl. Deb. (1865) 178, c. 181; *ibid.* (1868) 192, c. 322.

(*i*) For occasions on which the second reading of a bill has been taken immediately after its first reading, see C. J. (1914) 169; *ibid.* (1915) 173; *ibid.* (1919) 42; see also p. 815.

(*j*) Parl. Deb. (1883) 279, c. 519.

(*k*) The citation clause is sometimes the first clause of the bill, e.g. Army and Air Force (Annual) Bill, Government of India Bill, 1934.

(*l*) Ilbert, Legislative Methods and Forms, 1901, p. 272.

constitutional importance or bills modifying international conventions (*m*) in order to place on record the intentions of the framers of the bill. In the case of the Abnormal Importations (Customs Duties) Bill, 1931, the Import Duties Bill, 1932, and the Ottawa Agreements Bill, 1932, an expression of the aims of the legislation was incorporated with the enacting words.

(4) *Enacting Formula*.—The enacting formula is a short paragraph which precedes the clauses of the bill. This formula, which was developed in the fifteenth century, runs as follows: "Be it enacted by the King's Most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows." In Consolidated Fund and Finance Bills, the usual formula is preceded by certain words which define the sole responsibility of the Commons for the grant of money or duties (*n*): "Most Gracious Sovereign, We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom, in Parliament assembled (*in a Consolidated Fund Bill*) [towards making good the supply which we have cheerfully granted to Your Majesty in this Session of Parliament, have resolved to grant unto Your Majesty the sum hereinafter mentioned]—(*or in a Finance Bill*) [towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenues, have fully and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned (*o*)] ; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted, etc."

(5) *Clauses*.—The bill proper is divided into a series of numbered clauses, each with a descriptive title printed in the margin. Clauses may be divided into subsections "(1)," "(2)," etc., subsections into paragraphs, and paragraphs into sub-paragraphs. Long and complicated bills often have their clauses grouped in "parts" distinguished by Roman numerals and titles in capitals, and these parts may again be broken up into small groups of clauses with a group title in italics. A table of clauses may be prefixed to bills, showing the numbered titles of the clauses, and also any grouping into parts.

The order of a bill is usually so arranged that the leading principles are embodied in the opening clause or clauses. At the end of the bill are placed the formal clauses, *e.g.* definition clauses, "saving clauses," and clauses indicating the geographical "extent" of the bill. In the case of a temporary measure, a clause stating the precise duration is required by S.O. No. 45.

(6) *Schedules*.—At the end of many bills there is found a set of schedules which contain matters of detail dependent on the provisions of the bill.

(*m*) *E.g.* Parliament Bill, 1911; Geneva Convention Bills, 1911 and 1936; Government of India Bill, 1919; Statute of Westminster, 1931; His Majesty's Declaration of Abdication Bill, 1936; Patents, etc. (International Conventions) Bill [Lords] 1938. The Government of India Bill, 1934, had no preamble, as the preamble of the Act of 1919 was regarded as covering the policy of the later bill.

(*n*) Maitland, Constitutional History of England, ed. 1926, p. 185; Anson, Law and Custom of the Constitution, Vol. I, Parliament, 5th ed., 1922, p. 298.

(*o*) See also the enacting formula in the Abnormal Importations (Customs Duties) Bill, 1931; Import Duties Bill and Ottawa Agreements Bill, 1932.

A schedule is part of the bill and is dependent on one or more of the preceding clauses, by means of which the provisions of the schedule are carried into effect.

(7) *Explanatory Memorandum*.—A financial and (or) explanatory memorandum, though not technically part of the bill, is often printed attached to it. The rules as to this memorandum are explained below on p. 492.

#### EXAMINATION OF A BILL

The Member in charge of a bill takes the draft to the clerks in the Public Bill Office, who, before the bill is printed, are responsible for its examination, to see whether it has been prepared in conformity with the rules of the House. The following are the chief questions which have to be considered by the officials concerned, and which should be borne in mind by Members in drafting bills.

(1) *Provisions to be within the order of leave or notice of presentation*.—In preparing bills, care must be taken that they do not contain provisions which are not authorized by the notice of presentation or the order of leave, or by the resolutions upon which the bill was ordered to be brought in, when it is founded upon resolutions reported from a Committee of the whole House. The title of the bill must correspond with the notice of presentation (*p*), or the order of leave (*q*), and the bill itself must be prepared pursuant to the order of leave (*r*) or resolution (*s*) and in proper form. If it should appear that these rules have not been observed, the bill must be withdrawn (*t*).

A clause relating to the qualification of Members having been embodied in a bill for regulating expenses at elections, the bill was consequently withdrawn by order (*u*). When one subsection only of a clause was beyond the scope of the bill, the Speaker suggested that the bill should be allowed to proceed, but that the committee on the bill should strike out that subsection (*a*).

The title of the Representation of the People Bill, in session 1930-31, contained references to three specific objects which were not referred to in any of the clauses of the bill. The Speaker said that this was without precedent and an undesirable practice. The government had previously intimated their intention to withdraw the bill and introduce another with a title appropriate to its contents (*b*).

Such objections, however, should be taken before the second reading; for it is not the practice to order bills to be withdrawn, after they are com-

(*p*) House Letting (Scotland) Bill and Coal Mines (Check-weighers) Bill, C. J. (1908) 88, 225; Parl. Deb. (1908) 188, c. 1439; *ibid.* 189, c. 1437. The title of a bill as presented must not contain any alterations not covered by the notice on the paper, H. C. Deb. (1909) 9, c. 2313.

(*q*) New Zealand Bill, C. J. (1847) 832; Elective Franchise and Registration of Electors (Ireland) Bill, C. J. (1847-48) 522.

(*r*) Poor Removal (Ireland) Bill, C. J. (1883) 161; Speaker's Ruling, Registration of Electors Bill, Parl. Deb. (1893) 10, c. 938.

(*s*) Parl. Deb. (1894) 24, c. 1201; H. C. Deb. (1914) 63, c. 1569.

(*t*) C. J. (1825) 329; *ibid.* (1826-27) 325; *ibid.* (1829) 261; *ibid.* (1837) 254.

(*u*) C. J. (1835) 411.

(*a*) H. C. Deb. (1919) 120, c. 548. Cf. H. C. Deb. (1913) 52, c. 1221.

(*b*) H. C. Deb. (1931) 247, c. 345.

mitted, on account of any irregularity which can be cured while the bill is in committee (c), or on re-committal.

Objection being taken after report and recommitment of the Income Tax and Inhabited House Duties Bill, 1871, that the bill comprised provisions beyond the order of leave, and that the second reading had been agreed to under a misapprehension of its contents, the bill was withdrawn (d).

(2) **Money Bills.**—It has already been explained that bills, the main object of which is the expenditure of money or the imposition of taxation, must be founded upon resolutions of a Committee of the whole House. If, on examination, such a bill is found not to have originated in Committee of the whole House, it must be withdrawn.

As already stated above, a bill of this category, other than a bill required to originate in Committee of Ways and Means, if presented or brought in by the Government, may be excepted from this procedure; but any part of the bill, which imposes a charge, must be printed in italics (see next paragraph).

(3) **Bills with Money Clauses.**—Where a bill contains, as a subordinate or incidental part of its proposals, the imposition of a charge, it is not required to originate in Committee of the whole House, but the relevant clause or clauses have to be authorized by a resolution of a Committee of the whole House before they are considered by the committee on the bill. Any clause, or part of a clause, which on examination of the draft bill is seen to impose a charge, must be printed in italics (e). Similarly, in the case of a bill brought from the House of Lords, any words which have been left out or inserted by that House to avoid questions of privilege are underlined and placed in square brackets in the print of the bill circulated to the Commons (see p. 479), an explanatory note being placed at the head of the bill. It should be noted that provisions in Lords' bills which impose a charge are not, in addition, printed in italics.

(4) **Bills affecting private rights ("Hybrid" Bills).**—If it appears, upon examination, that a public bill may affect private rights (f), notice of this circumstance is sent from the Public Bill Office to the Member in charge of the bill; and the bill is referred by order of the House to the Examiners of Petitions for Private Bills (see p. 827) who are ordered to examine it with respect to compliance with the standing orders relative to private business (S.O. No. 32A). It is not the practice to refer bills dealing with matters of public policy, whereby private rights over large areas or of a whole class are affected (g). The reference to

(c) Parl. Deb. (1843) 71, c. 403; *ibid.* (1894) 27, c. 1091-96; H. C. Deb. (1911) 32, c. 215.

(d) Parl. Deb. (1871) 206, c. 577, 631.

(e) See also the chairman's remarks in respect of italicised words in the Finance Bill, where italics were found not to be necessary, H. C. Deb. (1931) 254, c. 289-91.

(f) Suffolk County Council Committee (Borrowing Powers) Bill, 1893; Waterford Infirmary (No. 2) Bill, 1895; County of Suffolk Bill, 1904; Crown Lands Bill, 1906; Crown Lands (No. 2) Bill, 1927; Mercantile Marine Memorial Bill, 1927; Post Office (Sites) Bill, 1928; Doncaster Area Drainage Bill, 1928-29; London Passenger Transport Bill, 1930-31, etc.

(g) See the Speaker's remarks with reference to the Railways Bill, H. C. Deb. (1921) 142, c. 43, and the Electricity (Supply) Bills, H. C. Deb. (1926) 193, c. 1686-87; *ibid.* (1934) 295, c. 1025.

the Examiners does not, however, affect the order for the second reading of the bill which remains on the notice paper, with a memorandum "to be reported upon by the Examiners" in brackets after the title of the bill; but the second reading cannot be moved until the report of the Examiners has been received (*h*).

Certain peculiarities in the treatment of the further stages of this type of bill are explained below (pp. 494, 505, 532 and see also Chapter XXX).

(5) **Bills with the same purpose as other bills of the same session.**—There is no rule or custom which restrains the presentation of two or more bills relating to the same subject, and containing similar provisions (*i*). But if a decision of the House has already been taken on one such bill, for example, if the bill has been given or refused a second reading, the other is not proceeded with if it contains substantially the same provisions, and such a bill could not have been introduced on a motion for leave. But if a bill is withdrawn, after having made progress, another bill with the same objects may be proceeded with (*j*). Bills having the same short title are distinguished by a number, according to priority in date of introduction, printed in brackets after the title.

The following examples illustrate the application of the rule laid down by the Commons on 1 June 1610, that "no bill of the same substance be brought in the same session (*k*)."

On 7 July 1840 Mr. Speaker called attention to a motion for a bill to relieve dissenters from the payment of church rates, before he proposed the question from the chair (*l*). Its form and words were different from those of a previous motion, but the object was substantially the same; and the House agreed that it was irregular and ought not to be proposed from the chair (see p. 375). On 15 May 1860 the order for the second reading of the Charity Trustees Bill was withdrawn, as it was discovered to be substantially the same as the Endowed Schools Bill, which the House had already put off for six months (*m*).

Objection has also been taken to a bill on the broader ground that a particular stage of it raised a question which had been previously decided by the House in relation to a bill of the same session. Such objection has rarely been found capable of being sustained (*n*).

(i) *When previously decided question related to an amendment on second reading.*—On 31 March 1859 an amendment was proposed, but not made, to a proposed amendment on the second reading of the Representation of the People Bill, expressing an opinion in favour of the ballot; but this was held not to preclude a motion on a later day for bringing in a bill for the taking of votes by way of ballot (*o*).

(ii) *When it related to a rejected instruction on a previous bill.*—The rejection of an instruction to the committee on the Parliamentary Elections (Redistribu-

(*h*) Parl. Deb. (1886) 306, c. 425.

(*i*) Parl. Deb. (1881) 268, c. 1656; *ibid.* (1883) 278, c. 92.

(*j*) C. J. (1920) 167; *ibid.* (1929-30) 242.

(*k*) C. J. (1547-1628) 434. For the reasons leading the Commons on one occasion to disregard this rule, see C. J. (1806-07) 61.

(*l*) C. J. (1840) 495; Parl. Deb. (1840) 55, c. 553.

(*m*) C. J. (1860) 249; Denison 45.

(*n*) By Mr. Speaker's instructions the notice of presentation of the Hospital Lotteries Bill was removed from the Paper on the ground that leave had been on 19 May 1931 refused to bring in the same bill under S.O. No. 10 (Private Ruling, 4 June 1931).

(*o*) C. J. (1859) 145, 170.



tion) Bill did not prevent the House from entertaining the Medical Relief Disqualification Removal Bill during the same session, which dealt with the object of the instruction (*p*).

(iii) *When question previously decided covered a portion only of the second bill.*—Objection was taken on 20 July 1870, that one of the objects of a bill then under discussion was to effect the repeal of an Act, a proposal which the House had negatived during that session, and that therefore the bill could not be considered, but the Speaker overruled the objection. As he pointed out, the bill had been introduced before the House had arrived at that decision, and the provision for the repeal of the Act might be struck out of the schedule by the committee on the bill (*q*). On consideration of the Profiteering Bill, as amended, in session 1919, a Member asked whether clause 3 of the bill was in order, as it was substantially a repetition of a bill which had been rejected on second reading; but the Speaker held that the House could revise a decision, provided that it was not asked to disagree with the same question (*r*).

(iv) *When the earlier bill had been rejected on a reasoned amendment directed against provisions not contained in the second bill.*—The fact that the Rent and Mortgage Interest Restrictions Bill, 1924, was rejected upon a reasoned amendment directed against one clause of the bill did not prevent the Prevention of Eviction Bill dealing with matters raised by other clauses of that Bill being read a second time, but (as stated on p. 391) an amendment seeking to introduce into the second bill the substance of the clause against which the reasoned amendment to the earlier bill was directed was ruled out of order (*s*).

(v) *When the later bill contained a portion only of the earlier rejected bill.*—The Local Government Provisional Order (No. 3) Bill, 1914, was allowed to proceed, although it contained one of the orders contained in the Local Government Provisional Orders (No. 21) Bill (suspended in 1913) which had been rejected in the session of 1914 (*t*).

**Bills amending or repealing Acts of the same Session.**—The amendment of an act of the same session is another aspect of the rule against the repetition of decided questions. Formerly it was expressly disallowed (*u*), but has been made permissible by the Act of 1850 (13 & 14 Vict. c. 21, s. 1), and by the Interpretation Act of 1889 (s. 10).

(6) **Members "backing" a Bill.**—The Speaker decided, on 1 February 1893, by a private ruling, that the names of Members ordered to bring in a bill should not exceed twelve in number, while the number of names on the back of a bill presented without an order of the House for its introduction is similarly limited (*a*).

(7) **Explanatory Memorandum.**—A Member, bringing in a bill, may prepare a memorandum explanatory of the contents and objects of the bill. The memorandum should be framed in non-technical language and should contain nothing of an argumentative character, and

(*p*) C. J. (1884–85) 78, 317; Parl. Deb. (1884–85) 294, c. 1938–43.

(*q*) Parl. Deb. (1870) 203, c. 563.

(*r*) H. C. Deb. (1919) 119, c. 1718. See also *ibid.* (1920) 132, c. 2204.

(*s*) C. J. (1924) 128, 129; H. C. Deb. (1924) 172, c. 138; *ibid.* 173, c. 67.

(*t*) H. C. Deb. (1914) 60, c. 683, 694; C. J. (1914) 105, 127; H. C. Deb. (1914) 64, c. 2061.

(*u*) In 1721 a prorogation for two days was resorted to in order to enable acts relating to the South Sea Company to be passed, contradictory to clauses contained in another act of the same session, C. J. (1718–21) 640 (1721).

(*a*) Parl. Deb. (1902) 104, c. 1292.

when revised in the Public Bill Office, is printed and circulated with the bill (*b*).

#### PRINTING OF A BILL BEFORE SECOND READING

After the draft of a bill has been examined, it is sent, in accordance with the order already made by the House, to be printed, in order that its contents may be published and distributed to every Member before the second reading (*c*).

A number is given to each bill by the Public Bill Office and appears on its face. When a bill is reprinted at any subsequent stage another number is assigned to it. Lords' Amendments are also numbered in the same series.

Unreasonable delay ought not to be allowed in the printing of a bill after its introduction (*d*); though the fact that the bill remains unprinted does not justify a motion that the order for the second reading be read and discharged (*e*). If a bill has not been printed when it is called on for second reading, the postponement of the bill is the usual course; though, as no rule forbids the second reading of an unprinted bill, a Member is in order in moving its second reading; and it is for the House to determine whether, in the circumstances, the bill should be read a second time (*f*).

#### ALTERATIONS IN A BILL

It has been laid down that, after a bill has been presented and read the first time, it is not regular to make any other than clerical alterations in it (*g*), inasmuch as, when a Member has introduced his bill, it ceases to be in his hands but has passed into the possession of the House (*h*). In practice, however, a bill is presented in dummy and is not printed until the draft has been examined by the Public Bill Office, in order to determine that the bill conforms to the notice of presentation or order of leave (see p. 483 above). After the bill has been printed and circulated, it would only be permissible to correct a clerical or printing error. If such an error is serious, a corrected copy of the bill may be circulated in substitution for the first print.

#### BILLS WITHDRAWN AND OTHER BILLS PRESENTED

If it should become necessary, before the second reading of a bill, to make considerable changes in its provisions, such changes can only be accomplished, at this stage, by discharging the order for the second reading and withdrawing the bill. If a change of title be necessary, the practice is to order the bill to be withdrawn, and to move

(*b*) Mr. Speaker's instruction to the Public Bill Office, 9 March, 1882; Parl. Deb. (1881) 260, c. 423; *ibid.* (1884) 289, c. 1513.

(*c*) Copies of Indemnity Bills, in accordance with a resolution of the House, are not circulated, but are obtainable by members, C. J. (1863) 134. Consolidated Fund Bills which were included in the same resolution have been circulated to members since 1910.

(*d*) Parl. Deb. (1873) 216, c. 276; *ibid.* (1877) 235, c. 1429; *ibid.* (1878) 240, c. 859.

(*e*) Parl. Deb. (1883) 279, c. 879.

(*f*) Parl. Deb. (1878) 239, c. 609; *ibid.* (1880) 256, c. 776; *ibid.* (1883) 277, c. 510; *ibid.* (1884) 289, c. 1834; *ibid.* (1892) 376, c. 385; H. C. Deb. (1909) 4, c. 447; *ibid.* (1911) 24, c. 2106; *ibid.* (1919) 122, c. 1086; *ibid.* (1919) 123, c. 457. The Speaker ruled on one occasion that the second reading of a bill could not be taken as the bill had not been printed, C. J. (1920) 167; H. C. Deb. (1920) 129, c. 933.

(*g*) Parl. Deb. (1850) 108, c. 969.

(*h*) Parl. Deb. (1873) 215, c. 303, 305.

subsequently for leave to bring in another bill; but where the bill is withdrawn, for the purpose of making numerous amendments, without any change of title, a simpler form of proceeding is adopted. Upon the withdrawal of the first bill, a motion is made forthwith that leave be given "to *present* another bill instead thereof" (*i*). A bill has been withdrawn and another bill ordered, after reading the resolution upon which the first bill was founded (*k*). By an old parliamentary rule, which has not been invariably observed in the House of Commons, a bill, whether public or private, brought from the other House, should not be withdrawn.

#### REPORT OF THE EXAMINERS OF PETITIONS FOR PRIVATE BILLS ON "HYBRID" BILLS

The report of the Examiners of Petitions for Private Bills, to whom a bill, which appears to be hybrid, has been referred, must be received before the second reading of the bill can be proceeded with. The further progress of such a bill depends upon the nature of the Examiners' report.

**Bills to which the standing orders do not apply.**—If the Examiners report that none of the standing orders, compliance with which, in the case of a private bill, would have to be proved before them, is applicable to the bill, it proceeds on its course as an ordinary public bill.

**Bills which have not complied with the standing orders.**—If the Examiners report that the standing orders applicable to the bill have not been complied with, the report is referred to the Select Committee on Standing Orders (see p. 852); the order of the day relating to the bill remains on the paper, with a note that the bill is to be reported on by the Select Committee on Standing Orders. No further action can be taken on the bill in the House until the report is received. If the Standing Orders Committee report that the Standing Orders ought not to be dispensed with, the order of the day for the second reading of the bill is read and discharged, after which the bill is usually withdrawn (*l*).

**Bills which have complied with the standing orders, or in respect of which the standing orders have been dispensed with.**—If the Examiners report that the standing orders relative to private bills are applicable and have been complied with, or if, when not complied with, the Standing Orders Committee report that the standing orders should be dispensed with, the memorandum ("to be reported upon by the Examiners") is removed from the notice paper, and the second reading of the bill may be moved in the ordinary way. The subsequent stages of a hybrid bill are described below on pp. 505, 532.

#### HYBRID BILLS ORIGINATING IN THE HOUSE OF LORDS

The preliminary proceedings on a hybrid bill which originates in the House of Lords are regulated by S.O. 224, under which the Examiners

(*i*) C. J. (1813-14) 369; *ibid.* (1852-3) 612; *ibid.* (1863) 344, 345; Parl. Deb. (1863) 172, c. 408; C. J. (1873) 120; Parl. Deb. (1873) 215, c. 303; C. J. (1878-9) 366; Parl. Deb. (1878-9) 248, c. 1119; C. J. (1888) 94; *ibid.* (1889) 407; *ibid.* (1890-91) 266; *ibid.* (1902) 77; *ibid.* (1918) 79; *ibid.* (1923) 71.

(*k*) C. J. (1856) 126; *ibid.* (1857) 185. Cf. also C. J. (1884-85) 264, 306.

(*l*) S.O. No. 32A. Military Manœuvres Bill, 1900; Canals Bill, 1905; the Bank of England (Nationalisation) Bill, 1926 (this bill was not withdrawn, C. J. (1926) 77).

are directed to report to the House of Commons whether any of the standing orders relative to private bills are applicable to the bill, and, if so, whether or not they have been complied with (*m*). If the Examiners report that the standing orders are applicable and have not been complied with, notwithstanding that the bill has not yet been introduced into the House of Commons, the report is forthwith referred to the Select Committee on Standing Orders, who are empowered to report to the House whether such standing orders ought or ought not to be dispensed with (see S.O. 104).

The Welsh Church (Amendment) Bill, which originated in the Lords in session 1937-38, was treated as a public bill in that House. In the Commons it was regarded as a hybrid bill, and was referred to the Examiners and subsequently to the Standing Orders Committee, before it was permitted to proceed (*n*).

#### SYNOPSIS OF STAGES OF A BILL

The various stages through which a bill progresses (normally but not necessarily on separate days) are intended by the practice of Parliament to provide so many opportunities not only for consideration, but also for reconsideration. Such stages may be taken to include the stages of any necessary financial resolution. Thus an entire bill may be regarded as one question which is not settled until it is passed. And hence no objection can be taken to an amendment on any particular stage on the ground that it raises again a question decided on an earlier stage.

Upon this principle, it is laid down by Hatsell, and is constantly exemplified, "that in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected" (*o*). Similarly an amendment may be proposed to a bill although it has been rejected when moved to a resolution of a Committee of the whole House necessary for the progress of the bill (*p*). The same clauses or amendments may be decided in one manner by the committee, in a second by the House on report, and, formerly might have been dealt with again on the third reading; and yet the inconsistency of the several decisions will not be manifest when the bill has passed.

On 8 August 1836 a clause, which was added on the report of the Pensions Duties Bill to exempt the pension of the Duke of Marlborough from the provisions of that bill, was struck out by amendment on the third reading of the bill (*q*). In 1844, an amendment of Lord Ashley (for ten hours' labour) having been carried against the Government in the Factories Bill (which limited the hours of labour to twelve), the Government withdrew the bill, and brought in another to the same effect, which was ultimately carried; and thus the decision of the House, upon Lord Ashley's amendment, was virtually reversed. Presumably, the same question was not regarded as having been raised because a decision in committee does not bind the House (*r*). In 1864, in committee on the Poisoned Flesh Prohibition, etc.,

(*m*) C. J. (1934-35) 67; *ibid.* (1936-37) 70.

(*n*) C. J. (1937-38) 163, 193, 241.

(*o*) 2 Hatsell, 135.

(*p*) H. C. Deb. (1912) 41, c. 1540.

(*q*) C. J. (1836) 762, 817.

(*r*) Lord Dalling, *Life of Lord Palmerston*, iii, 136, n.

Bill, a clause was added, providing that the bill should not extend to Ireland. This clause was left out on the consideration of the bill, as amended, and lastly, on the third reading, the bill was recommitted, and a proviso was introduced imposing restrictions upon the operations of the bill in Ireland (s).

Though the stages are thus treated as inter-connected portions of a single process of consideration, each stage is regarded as having its own peculiar function and to a certain extent its own more or less limited range of debate. The first reading of a bill is now purely formal (see p. 486). The purpose of each of the effective stages is as follows :

**Second reading.**—The stage of second reading is primarily concerned with the principle of a measure. Hence matters of detail ("committee points" as they are called) ought not to be discussed on second reading. On the other hand, at this stage, debate is not strictly limited to the contents of a bill, but other methods of attaining its proposed object may be considered, and even the inclusion of cognate objects recommended.

**Committee.**—In committee the details of a measure are the primary object of consideration, and alterations in its provisions are proposed. But amendment must be compatible with the principle of the bill which the House is taken to have affirmed on second reading. Hence destructive amendment, for instance, is out of order.

**Consideration on report.**—This stage used to be limited to a review of the amendments made in committee in order to decide upon their acceptance or rejection. But it has become very nearly a repetition of the committee stage, though this result tends to be modified in so far as the Speaker uses his powers of selection (see p. 453) against amendments which have been fully debated in committee.

**Third reading.**—The purpose of the third reading is to review a bill in its final form after the shaping it has received in the earlier stages. For this reason amendment is no longer permissible on third reading. Hence also debate is confined strictly to the contents of a bill, and cannot wander afield as on second reading.

If a financial resolution is necessary to a bill, the chief stage of the resolution is *in committee*. Here the financial implications of a measure are the subject of consideration. But it must be confessed that when (as in the case of a bill the main object of which is to incur expenditure) this stage precedes the introduction of the bill itself, the whole principle of the measure (so far as it can be inferred from the resolution) tends to be canvassed, and the stage to become very similar to a second reading (t).

## SECOND READING

### SECOND READING MOVED

The day having been appointed for the second reading, the bill stands upon the notice paper amongst the other orders of the day, and when the day arrives, is called on in its proper turn. The second reading is the most important stage through which the bill is required to pass ; for its

(s) C. J. (1864) 430, 436 ; Parl. Deb. (1864) 176, c. 1611.

(t) See, however, S.O. No. 64A and pp. 480, 737.

whole principle is then at issue, and is affirmed or denied by a vote of the House (*u*); though it is not regular on this occasion to discuss, in detail, its several clauses (*a*). Formerly, too, this principle was enforced on other stages of a bill, for example, on the question, that Mr. Speaker do leave the chair on going into committee (*b*), or on the question, that the bill be now taken into consideration (*c*), but under the present standing orders these questions are no longer proposed. The Member who has charge of the bill (or any other Member acting on his behalf) moves, "that the bill be now read a second time"; and takes this opportunity of explaining its objects. Debate on the stages of a bill should be confined to the bill, and should not be extended to a criticism of administration (*d*) or of the provisions of other bills then before the House or contemplated (*e*), relating to the same or cognate subjects: but the Speaker remarked, when called upon to enforce this rule, that on many such occasions some licence was conceded to honourable Members who addressed the House (*f*); and the rule is occasionally relaxed (*g*). The opponents of the bill may vote against the question "that the bill be now read a second time" (*h*); but this course is rarely adopted, because it still remains to be decided on what other day it shall be read a second time, or whether it shall be read at all; and the bill, therefore, is still before the House and may afterwards be proceeded with (*i*).

In former times, when the question for now reading a bill a second time had been negatived, it was followed by an order for reading the bill a second time that day three or six months (*k*). This practice, however, has now fallen into disuse, and opponents of a bill usually proceed to move one of the amendments described below.

#### MOTION FOR REJECTION OF BILL OBSOLETE

A motion that a bill be rejected, formerly not uncommon (*l*), is not now consistent with established practice.

(*u*) Instances of protracted debate on the second reading of bills: 1851, Ecclesiastical Titles Assumption Bill, seven sittings; 1881, Land Law (Ireland) Bill, eight sittings; 1884, Representation of the People Bill, six sittings; 1886, Government of Ireland Bill, twelve sittings; 1887, Criminal Law (Amendment) Ireland Bill, seven sittings; 1888, Local Government (England and Wales) Bill, six sittings; 1890, Purchase of Land and Congested Districts (Ireland) Bill, five sittings; 1893, Government of Ireland Bill, twelve sittings; 1927, Trade Disputes and Trade Unions Bill, four sittings; 1935, Government of India Bill, four sittings.

(*a*) Parl. Deb. (1875) 224, c. 1297; 225, c. 684; *ibid.* (1878) 237, c. 1593; see also debates on Expiring Laws Continuance Bills, Parl. Deb. (1887) 321, c. 38; *ibid.* (1902) 113, c. 427; *ibid.* (1905) 150, c. 1292; *ibid.* (1906) 167, c. 250; H. C. Deb. (1909) 12, c. 423; *ibid.* (1914) 65, c. 1673; *ibid.* (1923) 166, c. 1537; *ibid.* (1924) 179, c. 386-87; *ibid.* (1939-40) 355, c. 775.

(*b*) Parl. Deb. (1875) 223, c. 35; 225, c. 1683; *ibid.* (1877) 232, c. 1196.

(*c*) Parl. Deb. (1877) 236, c. 396.

(*d*) H. C. Deb. (1935-36) 307, c. 1456-57; *ibid.* (1941-42) 379, c. 987.

(*e*) H. C. Deb. (1941-42) 379, c. 996.

(*f*) On third reading of Church Rates Abolition Bill, Parl. Deb. (1861) 163, c. 1300.

(*g*) H. C. Deb. (1941-42) 383, c. 933.

(*h*) C. J. (1842) 345; *ibid.* (1844) 486; *ibid.* (1863) 206, 221.

(*i*) Parliamentary Electors' Bill, C. J. (1847) 822, 837, 872, 901; Church Rates Commutation Bill, C. J. (1863) 206, 222; Parochial Boards (Scotland) Bill and Crofters' Holdings (Scotland) Act (1886) Amendment Bill, C. J. (1888) 58, 74, 78, Parl. Deb. (1888) 322, c. 1496. See also Dublin, Wicklow, etc., Railway Bill (on consideration), C. J. (1887) 394, 402.

(*k*) C. J. (1851) 139; *ibid.* (1852) 267; *ibid.* (1854-55) 199.

(*l*) C. J. (1778-80) 444; *ibid.* (1825) 425.

In more ancient times bills were treated with even greater ignominy. On 23 January 1562-63 a bill was rejected and ordered to be torn; so, also, on 17 March 1620-21 Sir Edward Coke moved "to have the bill torn in the House"; and it is entered that the bill was accordingly "rejected and torn, without one negative" (m). Even so late as 3 June 1772 the Lords having amended a money clause in the Corn Bill, Governor Pownall moved that the bill be rejected, which motion being seconded, the Speaker said "that he would do his part of the business, and toss the bill over the table." The bill was rejected, and the Speaker, according to his promise, threw it over the table, "several members on both sides of the question kicking it as they went out" (n).

#### AMENDMENTS TO QUESTION FOR SECOND READING

It may be explained at once that both types of amendments to the second reading of a bill, which are described in the following paragraphs, may also be used on third reading. Formerly, reasoned amendments were allowed on the question, that Mr. Speaker do leave the chair, on going into committee, or on the question that the bill be now taken into consideration; and many of the illustrations given below are amendments moved on those stages, though some would be permissible in a practically similar form on second or third reading. When the committee and consideration stages of a bill are described (pp. 503, 536) it will be seen that no opportunity now exists for moving such amendments, though it is still possible, in the case of a private bill, to move an amendment, that it be taken into consideration upon this day six (or three) months.

**"Six (or three) months" Amendment.**—The ordinary practice, in opposing the second reading of a bill, is to move an amendment to the question, by leaving out the word "now" and adding the words "upon this day six (or three) months." The amendment "upon this day three months" is usually employed in a normal session after Whitsuntide. The question proposed upon such an amendment is, that the word "now" stand part of the question. The postponement of a bill, in this manner, is regarded as the most courteous method of dismissing the bill from further consideration, as the House has already ordered that the bill shall be read a second time; and the amendment, instead of reversing that order, merely appoints a more distant day for the second reading. The acceptance by the House of such an amendment being tantamount to the rejection of the bill, if the session extends beyond the period of postponement, a bill which has been ordered to be read a second time upon that day "six (or three) months" is not replaced upon the notice paper of the House (o).

**"Reasoned Amendment."**—It is also competent for a Member who desires to place on record any special reasons for not agreeing to the second reading of a bill, to move what is known as a "reasoned amendment." This amendment is to leave out all the words in the main question after the word "that" and to add other words; and the question proposed

(m) C. J. (1547-1628) 63 (1563); *ibid.* 252 (1604); *ibid.* 311 (1606); *ibid.* 560 (1620).

(n) 17 Parl. Hist. 512-15.

(o) Poor Removal (Ireland) (No. 2) Bill and Beer Adulteration Bill, C. J. (1882) 206

upon the amendment is, that the words proposed to be left out stand part of the question. A reasoned amendment is placed on the paper in the form of a motion and may fall into one of several categories.

(1) It may be declaratory of some principle adverse to, or differing from, the principles, policy or provisions of the bill (*p*).

(2) It may express opinions as to any circumstances connected with the introduction or prosecution of the bill (*q*), or otherwise opposed to its progress (*r*).

(3) It may seek further information in relation to the bill by committees (*s*), commissioners (*t*), the production of papers or other evidence (*u*).

Such amendments have tended in modern times to become rather stereotyped and are confined generally to the first two categories.

An amendment, urging the setting up of a select committee to consider *the subject matter* of a bill, might be moved and carried, if the House were averse from giving the bill itself a second reading and so conceding its principle. But where further information is desired *in direct relation to the terms of the bill before the House*, the advantage of referring the bill to a select committee could be explained in the second reading debate, and it would be open to a Member, after the bill had been read a second time, to move that it be committed to a select committee, under the provisions of S.O. No. 46 (1).

The principle of relevancy in an amendment (see p. 395) governs every such motion.

(1) The amendment must "strictly relate to the bill which the House, by its order, has resolved upon considering" (*a*), and must not include in its scope other bills then standing for consideration by the House.

An amendment proposed upon the second reading of the Roads and Bridges (Scotland) Bill, 1873, that the House declines to entertain *any* legislation involving the compulsory imposition of local burthens, etc., was held to affect other bills as well as that under consideration, and was therefore restricted to that bill only.

(*p*) Property Tax Bill, C. J. (1842) 321; Bank Charter Bill, C. J. (1844) 396; Representation of the People Bill, C. J. (1859) 125; Parl. Deb. (1859) 153, c. 1006; Army Discipline Bill, C. J. (1879) 141; Arrears of Rent (Ireland) Bill, *ibid.* (1882) 220; Criminal Law Amendment (Ireland) Bill, *ibid.* (1887) 162; Unemployment Bill, *ibid.* (1933-34) 17; Housing Bill, *ibid.* (1934-35) 53. Cf. also, on other stages, C. J. (1842) 113; *ibid.* (1844) 265, 468; *ibid.* (1845) 721; *ibid.* (1882) 337.

(*q*) Conspiracy to Murder Bill, C. J. (1858) 65; Paper Duty Repeal Bill, *ibid.* (1860) 115; Intoxicating Liquor, etc. (Ireland) Bill, *ibid.* (1890) 214; Newfoundland Fisheries Bill, *ibid.* (1891) 313; Government of India Bill, C. J. (1934-35) 66. Cf. also C. J. (1851) 321.

(*r*) Australian Colonies Government Bill, C. J. (1850) 334; Government of India Bill, *ibid.* (1852-53) 609; Representation of the People Bill, *ibid.* (1866) 213; Elementary Education Bill, *ibid.* (1876) 262; Valuation of Property Bill, *ibid.* (1877) 86; Customs and Inland Revenue Bill, *ibid.* (1878) 282.

(*s*) L. J. (1850) 284; *ibid.* (1851) 201; *ibid.* (1852-53) 279; *ibid.* (1856) 337; C. J. (1840) 476; *ibid.* (1844) 31; *ibid.* (1849) 384; *ibid.* (1850) 105; *ibid.* (1855) 238; *ibid.* (1870) 90; *ibid.* (1875) 98. Cf. also C. J. (1843) 354, 298.

(*t*) C. J. (1845) 719. Cf. also C. J. (1840) 469. (Amendment for an Address.)

(*u*) L. J. (1856) 543; C. J. (1882) 77. Cf. also C. J. (1847) 865; *ibid.* (1851) 382; *ibid.* (1852) 186.

(*a*) H. C. 517, p. 5 (1837); Parl. Deb. (1856) 143, c. 643; *ibid.* (1882) 269, c. 461; *ibid.* (1900) 86, c. 506; H. C. Deb. (1917) 97, c. 523.



(2) The amendment must not be concerned in detail with the provisions of the bill upon which it is moved, nor anticipate amendments thereto which may be moved in committee (*b*) ; nor is it permissible to propose merely the addition of words to the question, that the bill be now read a second time, as such words must, by implication, attach conditions to the second reading.

There are again certain reasoned amendments, which, though not of common occurrence, should be noted.

(1) An amendment, which amounts to no more than a direct negation of the principle of the bill, is open to objection, but there are special cases, for which it may be adapted.

On 21 February 1854 an amendment was made to the question for reading the Manchester Education Bill a second time, that " education to be supported by public rates, is a subject which ought not, at the present time, to be dealt with by any private bill," which gave legitimate expression to the opinion of the House (*c*).

(2) Amendments to the question for the second reading of a private bill, which seek to substitute for that question a resolution declaring the opinion of the House on a matter of public or general policy, are out of order (*d*) ; but an amendment stating that in the view of the policy of Parliament as declared in certain public Acts the House was not prepared to entertain a bill contravening them has been allowed to be moved and was carried (*e*).

**Effect of carrying a " Reasoned Amendment."**—It must be borne in mind, however, that the amendment, if agreed to, does not necessarily arrest the progress of the bill, the second reading of which may be moved on another occasion. The technical effect of such an amendment is to supersede the question for now reading the bill a second time ; and the bill is left in the same position as if the question for now reading the bill a second time had been simply negatived (*f*) or superseded by the previous question. The House refuses on that particular day to read the bill a second time, and gives its reasons for such refusal ; but the bill is not otherwise disposed of.

In 1861, the second reading of the Marriage Law Amendment Bill having been superseded by a resolution, the Speaker, on an appeal from the mover of the bill, suggested that the best course would be to withdraw the bill and introduce another in harmony with the expressed opinion of the House (*g*).

The practical result of carrying such a resolution varies according to its character and importance, the support it has received, and the means there may be of meeting it, and on certain occasions has had far-reaching political effects.

For example, the amendment to the second reading of the Conspiracy to Murder Bill, in 1858 (*h*), being also a vote of censure, was not only fatal to

(*b*) Parl. Deb. (1905) 145, c. 1149 ; *ibid.* (1908) 188, c. 76. Cf. also Parl. Deb. (1868) 192, c. 1571.

(*c*) C. J. (1854) 90.

(*d*) London and North Western Railway Bill, Parl. Deb. (1890-91) 352, c. 1-3.

(*e*) St. James's Vestry Hall (Westminster) Bill, C. J. (1910) 84.

(*f*) Parl. Deb. (1879) 244, c. 1384.

(*g*) Parl. Deb. (1861) 162, c. 892.

(*h*) C. J. (1857-58) 65.

that measure, but caused the immediate fall of Lord Palmerston's Ministry; and the amendment to the second reading of the Representation of the People Bill of 1859 (*i*) was decisive as to the bill and led to a dissolution.

To take a less important illustration, a resolution being carried on going into committee on the Thames Embankment (Land) Bill, 1872, that having regard to the advanced period of the session and the pressure of more important business, it was not expedient to proceed further with the consideration of the bill, the bill was necessarily abandoned (*k*).

According to modern practice, it would appear to be unlikely that, after a reasoned amendment had been carried on the second or third reading of a bill, any further progress would be made. If it is merely desired to draw attention to a matter incidental to the legislation intended by the bill, or to affirm a principle which could be incorporated in the bill at a later stage, this purpose could probably be better effected by an instruction (see pp. 391, 509) or an amendment moved in committee.

#### LIMITATION ON QUESTIONS TO BE PROPOSED ON SECOND (OR THIRD) READING

Under the provisions of S.O. No. 33, if on an amendment to the question for the second or third reading of a bill the House determines that the word "now" or any other words proposed to be left out of the question shall stand part of the question, the Speaker is directed forthwith to declare that the bill has been read a second or the third time, as the case may be (*l*).

The provisions of the standing order have been waived by general consent. On the second reading of the Finance Bill, 1919, a reasoned amendment having been negatived (*i.e.* the question "that the words proposed to be left out" being decided in the affirmative), the general debate on the question "that the bill be now read a second time" was resumed on the next day (*m*).

Apparently through inadvertence the standing order was not applied on the third reading of the Army and Air Force (Annual) Bill, 1920, when an amendment proposing the partial recommittal of the bill had been defeated (*n*).

It should be observed that both these cases occurred shortly after S.O. No. 33 was passed in 1919, and that since then the standing order has always been applied. With regard to the second instance, there seems to be no reason for considering an amendment to the third reading, proposing the recommitment of a bill, as distinct from any other amendment, and the provisions of the standing order should be enforced (see p. 542 below).

When both a "six (three) months'" amendment and a reasoned amendment are put down on the second or third reading of a bill, it is for the Speaker to determine, in accordance with his power under S.O. No. 28, which he will select. Owing to the limitations imposed by S.O. No. 33, however, it would appear desirable normally to give preference to the "six (three) months'" amendment, as Members who are opposed to the bill on any grounds can vote against the word "now" standing part, without committing themselves,

(*i*) C. J. (1859) 146.

(*k*) C. J. (1872) 371.

(*l*) C. J. (1919) 42.

(*m*) C. J. (1919) 149, 152; H. C. Deb. (1919) 116, c. 338.

(*n*) C. J. (1920) 107, 108; H. C. Deb. (1920) 127, c. 1981.

even inferentially, to the terms of the reasoned amendment, to which they may also object.

#### BILLS DROPPED

It may here be stated, that if, when the order of the day is read at the table, no motion is made for the second reading or other stage of a bill, or for its postponement, it becomes a dropped order, and does not appear again upon the notice paper, unless another day is appointed for its consideration (see p. 365).

#### PROCEEDINGS ON BILL NULL AND VOID

If a bill has been read a second (or the third) time by mistake or inadvertence, the proceedings have been declared null and void, and another day has been appointed for the second reading (*o*).

#### COUNSEL ORDERED

The second reading is the stage at which counsel have been heard, when the House has been of opinion that a public bill was of so peculiar a character as to justify the hearing of parties whose interests, as distinct from the general interests of the country, were directly affected by it (*p*). It is a general principle of legislation that a public bill, being of national interest, should be debated in Parliament upon the grounds of public expediency; and that the arguments on either side should be restricted to Members of the House, while peculiar interests are represented by the petitions of the parties concerned. Questions of public policy can only be discussed by Members; but where protection is sought for the rights and interests of public bodies, or others, the parties have been permitted to represent their claims, either in person or by counsel. Counsel have also been heard at various other stages of bills, as well as on the second reading. In the case of bills of pains and penalties, disabilities, or disfranchisement, it has been usual to order a copy of the bill, and the order for the second reading, to be served upon the parties affected, and to hear them by counsel (*q*). The Attorney-General has also been ordered to appoint counsel to manage the evidence, at the bar of the House,

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(*o*) C. J. (1859) 139; Parl. Deb. (1859) 153, c. 816; C. J. (1893-94) 244, 249, 252 (motion for committal of a bill to a standing committee rescinded); *ibid.* (1896) 134; *ibid.* (1914-16) 271; H. C. Deb. (1914-16) 75, c. 46; C. J. (1926) 217 (second reading and committal); *ibid.* (1937-38) 360 (third reading).

(*p*) Cotton Factories Bill, L. J. (1818) 662; Mr. Buckingham's Compensation Bill, C. J. (1835) 589; Warwick Borough Bill [Lords], L. J. (1834) 202, etc.; Municipal Corporations Bill [Lords], *ibid.* (1835) 329; Stafford Disfranchisement Bill [Lords], *ibid.* (1836) 284; Lower Canada Government Bill, C. J. (1837-38) 233; Jamaica Government Bill, L. J. (1839) 446; C. J. (1839) 208, 213; Jamaica Laws Bill, *ibid.* (1839) 318; Ecclesiastical Duties and Revenues Bill, L. J. (1840) 545, 551; Sudbury Disfranchisement Bill, *ibid.* (1844) 560; Newfoundland Fisheries Bill, *ibid.* (1890-91) 158; C. J. (1890-91) 308, 313; Parl. Deb. (1891) 352, c. 1131. For explanations of the principle upon which Parliament has permitted counsel to be heard against public bills and precedents cited, see Lords' Debate on Australian Colonies Bill, Parl. Deb. (1850) 111, c. 943.

(*q*) Wilson's Disabilities Bill, 1737, C. J. (1732-37) 889; Rumbold's Pains and Penalties Bill, 1782, *ibid.* (1780-82) 982; The Queen's Degradation Bill, 1820, L. J. (1820) 282.

in support of the bill (*r*), or to take care that evidence be produced in support of the bill (*s*).

### COMMITTAL

Before 1907, unless a motion was carried to commit a bill to a standing or select committee, a bill was committed to a Committee of the whole House, the process being practically the same as that described in connection with the House of Lords; but since that year the committal of a bill in the Commons has been regulated by the provisions of S.O. No. 46 under which, when a bill has been read a second time, it stands committed to one of the standing committees, which are set up every session. There are, however, exceptions to this practice, which are provided for in the standing order.

#### EXCEPTIONS TO GENERAL PRACTICE

(1) Bills for imposing taxes or Consolidated Fund or Appropriation Bills are expressly exempted from the operation of the standing order and are committed automatically to a Committee of the whole House.

(2) Bills for confirming provisional orders are likewise exempted, and, after committal, stand referred, under S.O. 217, to the Committee of Selection, and are dealt with by that committee in the same way as private bills.

(3) In the case of any other bill, a motion may be made by any Member, that the bill be committed to a Committee of the whole House, or to a select committee (*t*), or that it is expedient that the bill be committed to a joint committee (*u*); but only one such motion may be made (*a*). Such a motion does not require notice, must be made immediately after the bill has been read a second time, and must be decided without amendment or debate. If opposed, it may be decided after the expiration of the time for opposed business, or after half-past seven o'clock, when other business has been set down for that hour (*b*). If the motion is negatived, the bill stands committed to a standing committee (*c*).

S.O. No. 46 provides also that the Member in charge of the bill may move that the bill be committed to a standing committee in respect of some of its provisions and to a Committee of the whole House in respect of other provisions. When such a motion is opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the

(*r*) C. J. (1732-37) 889 (1737); *ibid.* (1780-82) 1004, (1782).

(*s*) C. J. (1868-69) 180.

(*t*) Bills have sometimes been committed to a select committee to which other bills have been committed, C. J. (1851) 243; *ibid.* (1861-62) 146; *ibid.* (1865) 65; *ibid.* (1874) 151; *ibid.* (1878) 61, etc.; or to a select committee appointed to inquire into another matter (see p. 581).

(*u*) Wills and Intestacies (Family Maintenance) Bill, 1931. After the Lords had agreed to the resolution, the bill was committed to a joint committee, C. J. (1930-31) 135, 156, 176.

(*a*) H. C. Deb. (1914) 61, c. 2079; *ibid.* (1924) 170, c. 1885.

(*b*) Cf. H. C. Deb. (1909) 3, c. 417.

(*c*) C. J. (1937-38) 72.

Member who makes and from a Member who opposes the motion, is directed to put the question thereon without further debate.

#### DISTRIBUTION OF BILLS COMMITTED TO STANDING COMMITTEES

The bills committed to a standing committee are distributed among the committees by the Speaker (*d*), who changes his allocation of them from time to time, if occasion should arise (*e*). Bills which relate exclusively to Scotland, if committed to a standing committee, are considered by the Standing Committee on Scottish Bills (*f*). It lies with the Speaker to determine whether a bill relates exclusively to Scotland (*g*), but he cannot allocate part of a bill to the Standing Committee on Scottish Bills (*h*).

#### TRANSFER OF BILL FROM STANDING COMMITTEE TO COMMITTEE OF THE WHOLE HOUSE OR SELECT COMMITTEE, AND VICE VERSA

If it should be desired that a bill which stands committed to a standing committee should be considered in a Committee of the whole House or by a select committee, a motion is made for discharging the former committal of the bill and for committing it to a Committee of the whole House (*i*) or a select committee (*k*), as the case may be.

The Betting and Lotteries Bill [Lords], 1934, was committed to a standing committee, which commenced the consideration of clause 1. The order for its committal, except so far as clause 1 was concerned, was subsequently discharged, and the bill, except clause 1, was committed to a Committee of the whole House (*l*).

The Railways Bill, 1921, was committed to a standing committee, but, later, under an Allocation of Time order, parts of the bill were ordered to be allocated to another standing committee (*m*) (see also p. 458).

On the other hand, an order committing a bill to a Committee of the whole House can be discharged, and the bill committed to a standing committee (*n*) or a select committee, though the necessity for such a proceeding rarely arises.

Under the present system, with the exceptions stated above (p. 503), bills stand committed to a standing committee, unless the House otherwise orders, and a definite procedure is laid down, if the House desires to vary the normal practice in respect of a particular bill and to secure its consideration in Committee of the whole House or by a select committee. Hence a motion to transfer a bill, which has been specially committed to a Committee of the whole House, to a standing or select committee would be a most unusual occurrence. There is nothing, however, in the standing order which implicitly prohibits such a proceeding, and it is possible, as formerly, to move

(*d*) S. O. No. 47.

(*e*) C. J. (1908) 414, *ibid.* (1936-37) 207.

(*f*) S.O. No. 47 (2).

(*g*) Parl. Deb. (1907) 173, c. 1190; H. C. Deb. (1914) 62, c. 1467.

(*h*) H. C. Deb. (1923) 162, c. 137.

(*i*) C. J. (1914) 159; *ibid.* (1919) 143, 267, 405; *ibid.* (1920) 147; *ibid.* (1922) 72.

(*k*) C. J. (1909) 179.

(*l*) C. J. (1933-34) 256, 336.

(*m*) C. J. (1921) 247, 252.

(*n*) C. J. (1917-18) 19, 26.

to discharge the order and commit the bill to a standing (o) or select (p) committee. Such a motion has even been made although the bill was under consideration in Committee of the whole House (q). Similarly, the order for committee on a bill has been read and discharged without notice, and a resolution passed that it was expedient to commit the bill to a joint committee (r).

Motions for the committal of a bill to a committee other than that first ordered by the House would not be subject to the conditions laid down by S.O. No. 46 (1) for a motion moved immediately after second reading. Debate thereon, however, would be confined to the effect or expediency of referring the bill to the proposed committee, and general debate upon the merits or clauses of the bill would not be permitted (s). An amendment to add "upon this day six months" at the end of such a motion would be out of order (t).

#### COMMITTAL OF HYBRID BILLS

A hybrid bill, after being read a second time, is committed to a select committee nominated, as a general rule, partly by the House and partly by the Committee of Selection.

A hybrid bill has been committed to a committee of three members nominated by the Committee of Selection (u).

Hybrid bills have also been committed to joint committees (a), the Commons' Members being nominated, as a rule, by the Committee of Selection. Furthermore, hybrid bills have been committed to select committees on private bills (b), and to a joint committee on private bills (c).

The Gas (Metropolis) Bill, 1860, being a hybrid bill, was committed to a select committee. Subsequently the order for its committal was discharged, and the bill was referred to the Committee of Selection (d) and considered by a Private Bill Committee, which was given power to send for persons, papers, and records.

The House has sometimes treated bills on which the Examiners have reported that no standing orders are applicable (e) and bills which have not even been referred to the Examiners (f), as hybrid bills.

(o) C. J. (1893-94) 116, 417; *ibid.* (1895) 86; *ibid.* (1897) 222; *ibid.* (1901) 266; *ibid.* (1904) 222.

(p) C. J. (1854-55) 143; *ibid.* (1856) 207; *ibid.* (1857) 337; *ibid.* (1898) 247.

(q) C. J. (1688-93), 399, 400 (1690); *ibid.* (1881) 154, 236; Parl. Deb. (1881) 261, c. 502; C. J. (1892) 221, 264.

(r) C. J. (1894) 66.

(s) Parl. Deb. (1883) 278, c. 335, 341; *ibid.* (1884) 287, c. 1870; *ibid.* (1892) 4, c. 305, 1310.

(t) Parl. Deb. (1883) 278, c. 394.

(u) Dean Forest Bill, 1904, C. J. (1904) 220.

(a) London Water Bill, 1902; Port of London Bills, 1903 and 1908 (members nominated by the House); Ouse Drainage Bill, 1927; Doncaster Area Drainage Bills, 1929 and 1933; Public Offices (Sites) Amendment Bill, 1931; London Passenger Transport Bill, 1931.

(b) Metropolis Water Supply Bill and Metropolitan Water Companies (Charges) Bill, 1891, to the Committee on the London Water Commission Bill.

(c) Doncaster Area Drainage Bill, 1929, to the Joint Committee on Railways (Air Transport) Bills.

(d) C. J. (1860) 176, 187, 231.

(e) Dublin Barracks Bill, 1892.

(f) Brine Pumping (Compensation for Subsidence) Bill, 1891; Barge Owners, etc., Liability Bill, 1892; Merchant Shipping (Tonnage Deduction for Propelling Power) Bill, 1907.

An order is made by the House that all petitions against the bill presented not later than a certain number of clear days after second reading, or before a certain date, shall be referred to the committee; that petitions against the bill may be deposited in the Committee and Private Bill Office provided that they are prepared and signed in conformity with the rules and orders of the House relating to petitions against private bills (see p. 870); and that the petitioners praying to be heard by themselves, their counsel or agents shall be heard against the bill and counsel (or agents) heard in support of the bill (g).

Unless the order expressly provides that petitions against the bill may be deposited in the Committee and Private Bill Office they must be presented to the House as public petitions and must comply with the rules and orders of the House relating to public petitions (see p. 795).

If a petition against alterations in the bill (see p. 871) is presented before the bill has been reported it is referred by the House to the committee (h).

#### FUNCTIONS OF A COMMITTEE ON A BILL

The function of a committee on a bill is to go through the text of the bill clause by clause and, if necessary, word by word, with a view to making such amendments in it as may seem likely to render it more generally acceptable. The rules as to the admissibility of amendments are explained in detail on pp. 520-30 below, but the general powers of a committee and the limitations by which it is bound should be clearly borne in mind.

(1) A committee is bound by the decision of the House, given on second reading, in favour of the principle of the bill, and should not, therefore, amend the bill in a manner destructive of this principle.

(2) The objects of a bill are stated in its long title, which should cover everything contained in the bill, as introduced, and any amendment, which is inside the title of the bill, is in order. Moreover, a committee is empowered by S.O. No. 34 to make amendments "relevant to the subject matter of the bill," provided that, where such amendments are outside the title, the committee extends the title so as to cover them.

(3) An amendment which is outside the "scope" (as defined in paragraph (2) above) of the bill is out of order and cannot be entertained, unless a special instruction has been given by the House to the committee.

It will be seen, however, that in spite of these limitations a committee has, in practice, considerable power over a bill. More, in his "Notes of Debates in the Long Parliament" (14 April 1641), states that "no committee can destroy a bill, but they can lay it down." Thus, while a bill cannot be withdrawn in committee, for this requires the leave of the House, a Committee of the whole House can indirectly achieve this object by reporting progress, without asking leave to sit again, and so putting an end to its existence. This course is equivalent to refusing

(g) North Killingholme (Admiralty Pier) Bill, 1931; Bethlem Hospital (Amendment) Bill [Lords], 1931; Doncaster Area Drainage Bill, 1933; Welsh Church (Amendment) Bill [Lords], 1938.

(h) C. J. (1930-31) 257.

to proceed with the bill. Again, notwithstanding the rule which forbids the moving of an *amendment*, which is destructive of the principle of the bill, there is nothing to prevent a Committee of the whole House from negating a clause or clauses, the omission of which may nullify or destroy the bill, and reporting the bill, as amended, to the House. In a standing committee, a motion may be moved "That the committee do not proceed further with the consideration of the bill" (see pp. 622-23), or an essential clause may be negated. A standing committee has, in fact, disagreed to all the clauses of a bill and made a Special Report to the House (i).

Doubts have arisen whether the committee, to whom a bill has been referred, can by amendment so change the provisions of the bill, that when it is reported to the House, the bill is in substance a bill other than that which was referred to the committee. As stated above, a committee can negative every clause of which the bill committed to them is composed, and can substitute for those clauses new clauses, if relevant to the bill, as read a second time, and otherwise in order (k). On the other hand, in 1856, the Partnership Amendment Bill having been committed *pro forma*, was extensively amended, no amendment being inserted which it was not clearly competent for the committee to entertain. When objection was taken that it had become a new bill, the Minister in charge of it, while denying the alleged extent of the amendments, consented to withdraw the bill (l). In 1889 appeal was made to the Speaker regarding extensive alterations made by the committee on the Tithe Rent-Charge Recovery Bill. He stated that, whilst he desired to safeguard the rights and jurisdiction of the Chairman of Ways and Means in giving an opinion on a matter of committee procedure, and although he could not, as Speaker, stop the bill on the point of order that the bill was a new bill, he unhesitatingly affirmed that the practice of the House had been, in a case of this kind, to withdraw a bill which had been so dealt with, and to introduce another bill in the amended form on which the decision of the House could be obtained upon a second reading. The bill was thereupon withdrawn (m). On 27 January 1913 the Speaker was asked to express his opinion as to certain amendments which it was proposed to move to the Franchise and Registration Bill, then being considered in Committee of the whole House. The Speaker, while declaring that the proper time for raising such a question was after the bill had been reported to the House, said that the admission of any one of the amendments to which his attention had been directed would so alter the bill as to make it a new bill, and that he would advise the House under the circumstances that the bill should be withdrawn and leave be asked for the introduction of a new bill (n).

#### COMMENCEMENT OF COMMITTEE STAGE

**Notice of amendments in committee.**—Notices of amendments to a bill in committee are not received at the table until the bill has been read a second time (but see p. 812).

(i) C. J. (1919) 232.

(k) Coroners in Boroughs Bill, C. J. (1892) 259. See also p. 624.

(l) Parl. Deb. (1856) 140, c. 2200.

(m) Parl. Deb. (1889) 339, c. 1487.

(n) C. J. (1913) 510; H. C. Deb. (1913) 47, c. 1019; see also *ibid.* c. 643, 878.



**Order for committee read.**—On the order of the day being read for the House to resolve itself into committee on a bill, the Speaker leaves the Chair forthwith, pursuant to S.O. No. 16, unless a Member rises to move an instruction which stands upon the notice paper.

#### INSTRUCTIONS

Before the committee, to which a bill has been referred, commences its consideration of the bill, an instruction may be given to such committee, the purpose of which is either to empower the committee to do something which it could not otherwise do, or to define the course of action which it must follow. The first type of instruction is called permissive, the second mandatory.

Instructions may be given not only to a Committee of the whole House, but to any other committee. An instruction to a Committee of the whole House can only be moved in the permissive form, namely, "that they have power to consider the matter dealt with by the instruction" (o), and this rule applies also to standing and joint committees. A mandatory instruction, however, may be given to a select committee or to a committee on a private bill.

**Origin of Instructions.**—In considering the principles which underlie the proposal of instructions, it must be remembered that the subject matter of a bill forms the order of reference which governs the proceedings of the committee thereon. In former times no amendment to a bill could ordinarily be moved in committee, if it was outside the title; but if it was desired to move such an amendment it was necessary first, by an instruction, to give the committee power to entertain it. Bramwell, in "The Manner of Proceeding of Bills in the House of Commons" (ed. 1833, p. 107), states that "committees on private as well as public bills can admit no provisions which do not come within the scope of the title. If any provisions foreign to the title are intended to be added in the committee, instructions for that purpose must be obtained from the House." Again, on page 96, the author states that "if it be proposed to insert in the bill any new or additional matter foreign to the bill, or not within the scope of its title, or to leave out of the bill any subject matter expressed in its title, the committee must be expressly empowered to make provisions for all such purposes by previous instructions from the House."

The rigidity of this rule was found to be inconvenient, and in 1854 the House, by S.O. No. 34, gave a general instruction to all committees to which bills were committed, empowering them to make such amendments therein as they should think fit, provided that the amendments were *relevant* to the subject matter of the bill; and, if such amendments were not within the title, the title was to be amended and reported specially to the House.

The effect of this standing order, though it was perhaps not felt immediately, has been to reduce the number of occasions when it is necessary

(o) Parl. Deb. (1867) 189, c. 1070; *ibid.* (1901) 97, c. 453; *ibid.* (1904) 134, c. 451; *ibid.* (1904) 139, c. 1219; *ibid.* (1905) 148, c. 268; H. C. Deb. (1928) 216, c. 205. See also Colchester, i, 431, Sidmouth, ii, 144.

to widen the powers of a committee by an instruction, and, in modern times, the rulings of the Chair on instructions are tending to become much stricter than formerly (*p*). Frequently an instruction is proposed which is unnecessary, as the amendments which it is designed to admit, could be considered by the committee under the general instruction given by S.O. No. 34. Occasions, however, continue to arise, though perhaps more rarely, when it is desired to propose amendments in committee of wider scope than those contemplated in the standing order, which the committee could not consider without a special instruction from the House empowering them to do so. Some classification, therefore, is attempted to show under what circumstances an instruction is necessary and admissible, and when it is superfluous or out of order. It should be remembered, also, that the mere proposal of an instruction, whether it is accepted or ruled out of order, may provide valuable guidance to the committee in respect of any amendment or series of amendments.

**Admissible Instructions.**—(*1*) *Extension of objects.*—An instruction is necessary to authorize the introduction of amendments into a bill, which extend its provisions to objects not strictly covered by the subject matter of the bill as disclosed on the second reading, provided that these objects are cognate to its general purposes.

The Restoration of Order in Ireland (Indemnity) Bill, 1923, was to prohibit the institution and prosecution of legal proceedings in respect of action taken under the Restoration of Order in Ireland Regulations. An instruction was necessary (and agreed to) to empower the committee to provide for the assessment of compensation to persons deprived of a right of action for damages or for other legal proceedings by the bill (*q*).

The Petroleum (Amendment) Bill, 1928, was to amend the enactments relating to petroleum and petroleum spirit. An instruction was necessary (and agreed to) to empower the committee to enable local authorities to make by-laws for preventing injury being caused by petroleum filling stations to the amenities of rural scenery and places of beauty and historic interest (*r*).

In the case of the Representation of the People (Equal Franchise) Bill, 1928, which was to assimilate the franchises for men and women in respect of parliamentary and local government elections and for purposes consequential thereon, an instruction was put down, empowering the committee to insert provisions dealing with the maximum scale of election expenses. The Speaker stated that it was doubtful whether the committee would be able to entertain this question without an instruction, and that he considered this question cognate to the bill. The instruction was accordingly moved and agreed to (*s*).

The Workmen (Compensation for Accidents) Bill, 1897, expressly referred only to injuries arising from accidents. It was desired to insert provisions to secure compensation to workmen for injuries to health arising out of and in the course of their employment. Owing to the express terms of the bill, the Speaker considered that an instruction was necessary in order that the committee might entertain an amendment of this character (*t*).

(*p*) For two general rulings on Instructions, see Parl. Deb. (1890) 344, c. 19; *ibid.* (1890) 345, c. 347.

(*q*) H. C. Deb. (1923) 164, c. 1037.

(*r*) H. C. Deb. (1928) 215, c. 171.

(*s*) H. C. Deb. (1928) 216, c. 205.

(*t*) Parl. Deb. (1897) 49, c. 1153.

The Voluntary Schools Bill, 1897, proposed that certain associations representative of the managers of the schools associated together should be the machinery for distributing the grant in aid, and an instruction was offered to empower the committee to make provision for ensuring adequate representation of local authorities, or parents, on the management of the schools in receipt of the grant. As this was a large proposal, which only bore indirectly on the subject matter of the bill, and raised a new principle not hitherto brought under the consideration of the House, the Speaker ruled that it could not be entertained without an instruction (*u*).

In the first four examples given above, the proposed instructions dealt with matters cognate to the bill. In the last instance, a new principle was raised which bore, however indirectly, on the subject matter of the bill, and some modification of the machinery of the bill was suggested (*a*).

(2) *Extension of Area*.—An instruction is necessary to render applicable to the whole of the United Kingdom the provisions of a bill which is limited by its title to a part of the United Kingdom, or otherwise to extend its operation beyond the limits defined in the title.

The Agricultural Land Rating Bill, 1896, proposed to amend the law in respect of the rating of occupiers of agricultural land in England. An instruction was required to extend the operation of the bill to Ireland (*b*).

In default of such an instruction, the Chairman has declined to put the question on an amendment (*c*) or on a new clause (*d*). When such a clause was inserted in a bill in committee without an instruction, the Speaker stated, on consideration of the bill, as amended, that the proper course would be to recommit the bill, but in the circumstances the bill was allowed to proceed on the understanding that the clause in question would be struck out (*e*).

Conversely, it should be borne in mind that a committee can, without an instruction, extend the operation of a bill to Scotland or Northern Ireland, if the bill is not by the title restricted to England, or limit the area to which the bill is to apply (*f*).

(3) *Division of bill*.—An instruction is required to enable a committee to divide a bill into two or more bills (*g*), but such an instruction is in order only if the bill is drafted in two or more distinct parts, or

(*u*) Parl. Deb. (1897) 46, c. 1154.

(*a*) For other cases where an instruction was necessary to empower a committee to consider the amendments proposed by the instruction, see Representation of the People Bill, Parl. Deb. (1860) 15, c. 1966; Markets and Fairs (Ireland) Bill, *ibid.* (1862) 165, c. 1876; Representation of the People Bill, *ibid.* (1866) 183, c. 1320; Representation of the People Bill, *ibid.* (1867) 186, c. 1269; Land Purchase (Ireland) Bill, *ibid.* (1888) 331, c. 33, 61; Local Government (England and Wales) Bill, *ibid.* (1888) 326, c. 1440, 1457; Private Bill Procedure (Scotland) Bill, *ibid.* (1891) 352, c. 155; Elementary Education Bill, *ibid.* (1891) 354, c. 1870; Established Church (Wales) Bill, *ibid.* (1895) 33, c. 540; Established Church (Wales) Bill, H. C. Deb. (1912) 44, c. 1829; Coal Mines Bill, *ibid.* (1932) 266, c. 1167; Gas Undertakings Bill [Lords], *ibid.* (1932) 266, c. 2077.

(*b*) Parl. Deb. (1896) 40, c. 1266. Cf. also Poor Law Amendment Act (1876) Amendment Bill, *ibid.* (1879) 244, c. 1600; Games Laws Amendment (Scotland) Bill, *ibid.* (1879) 249, c. 175; Crofters (Scotland) Bill, *ibid.* (1886) 304, c. 110, 117.

(*c*) H. C. Deb. (1914) 68, c. 739; *ibid.* (1918) 110, c. 1424.

(*d*) H. C. Deb. (1914) 68, c. 744; C. J. (1887) 333; *ibid.* (1888) 500 (clause withdrawn).

(*e*) H. C. Deb. (1914) 65, c. 1938.

(*f*) Parl. Deb. (1896) 40, c. 1266.

(*g*) C. J. (1861) 376; *ibid.* (1868-69) 192; *ibid.* (1871) 114; *ibid.* (1893-94) 592; *ibid.* (1905) 333; *ibid.* (1909) 103; *ibid.* (1911) 310; *ibid.* (1912-13) 199, 435, 508; *ibid.* (1913) 214, 218, *ibid.* (1916) 75; *ibid.* (1917-18) 112.

else, comprising more than one subject matter, lends itself to such division into parts (*h*).

(4) *Consolidation of bills*.—An instruction is required to empower a committee to consolidate two bills into one bill (*i*).

(5) *Priority to portion of bill*.—An instruction must be moved, if it is desired to give priority to the consideration of a portion of a bill, with power to report the same separately to the House (*k*).

(6) *Power to hear counsel*.—Instructions have been given to committees of the whole House, on the presentation of a petition, empowering the committee to hear counsel and examine witnesses (*l*).

**Inadmissible Instructions.**—(1) *Outside scope of bill, &c.*—An instruction is out of order—

(i) if it attempts to embody in a bill principles which are foreign or not cognate to the bill, or are outside its scope and declared intention ;

An instruction was put down to the Representation of the People (Equal Franchise) Bill, 1928, to empower the committee to insert provisions dealing with the enfranchisement of incorporated companies. As the bill was to assimilate the franchises for men and women, this object was regarded as not cognate to the bill, and the instruction was ruled out of order (*m*).

The Trade Disputes and Trade Unions Bill, 1927, was to declare and amend the law relating to trade disputes and trade unions. An instruction empowering the committee to insert provisions to prevent the coercion of the community by the withholding of supplies from traders' or consumers' organizations by associations of manufacturers or wholesale or retail distributors was held to be outside the scope of the bill, and out of order (*n*).

An instruction was put down to the Poor Law Bill, 1934, to insert a provision relating to the disregarding of any weekly payments by way of compensation under the enactments relating to workmen's compensation, and to extend such provision to Scotland and Northern Ireland. It was ruled out of order, as being outside the declared intention of the bill, when the House gave it a second reading, namely, to bring the English law into conformity with the existing Scottish law, "so as to secure uniformity throughout Great Britain in the provisions relating to the disregarding of sick pay, maternity benefit, and wounds or disability pensions" (*o*).

The Tithe Rent-Charge (Rates) Bill, 1899, was to amend the law with respect to the payment of rates on tithe rent-charge attached to a benefice. An instruction to apply the bill to rates assessed in respect of tithe rent-charge payable to schools and colleges was ruled out of order, as applying the provisions of the bill to a subject-matter foreign to its purpose (*p*).

(ii) if its objects are inconsistent with the decision of the House taken on second reading, or seek to traverse that decision by an alternative scheme or postponement ;

(*h*) Parl. Deb. (1894) 27, c. 1028 ; H. C. Deb. (1917) 94, c. 162.

(*i*) C. J. (1866) 344 ; Parl. Deb. (1866) 183, c. 1319 ; C. J. (1889) 319. For similar instructions to a standing committee, see C. J. (1883) 141 ; *ibid.* (1890) 418 ; *ibid.* (1890-91) 254 ; *ibid.* (1901) 324 ; *ibid.* (1903) 280 ; *ibid.* (1929-30) 203.

(*k*) C. J. (1890-91) 30 ; *ibid.* (1895) 182 ; *ibid.* (1911) 124.

(*l*) C. J. (1828) 122 ; *ibid.* (1831-32) 461 ; *ibid.* (1867) 152 ; Parl. Deb. (1867) 186 c. 982.

(*m*) H. C. Deb. (1928) 216, c. 205.

(*n*) H. C. Deb. (1927) 206, c. 399.

(*o*) H. C. Deb. (1934) 293, c. 1431.

(*p*) Parl. Deb. (1899) 74, c. 325.

An instruction to the Tithe Rent-Charge (Rates) Bill, 1899, sought to empower the committee to provide for the repayment by the Ecclesiastical Commissioners out of their ecclesiastical property, to the Commissioners of Inland Revenue, of all sums paid by the latter in respect of rates under the bill. The instruction was ruled out of order, as it did not propose to amplify or extend the operation of the bill, but was in the nature of an alternative proposal, destructive of the principle of the bill, which could have been raised in the form of a reasoned amendment on second reading (*q*).

Instructions were put down to the Government of Ireland Bill, 1912, which proposed to postpone the establishment of an Irish Parliament until separate Parliaments had been established for England, Wales, and Scotland, or until the House of Lords had been reconstituted in pursuance of the preamble to the Parliament Act, 1911. They were ruled out of order as second reading objections (*r*). An instruction on similar lines, in the case of the Government of Ireland Bill, 1893, that the bill should not come into effect, until it had been approved by a majority of electors in Great Britain and Ireland, was disallowed, because the principle of a referendum was of too great importance to be brought within the scope of the bill by an instruction, and its effect would have been to enable the electors to override the decision of Parliament (*s*).

An instruction was put down to the Agricultural Land Rating Bill, 1896, which sought to empower the committee to defer the consideration of the sum to be set apart out of the funds provided by the Chancellor of the Exchequer, until the respective proportions for Ireland and Scotland, based upon the acreage of rated agricultural land in each country, should have been ascertained. The Speaker ruled that, while the committee might negative the clause as to providing funds, or postpone its consideration till a later period of their sitting, it would not be proper after the House had referred the bill to a committee, to endeavour by an instruction to postpone the consideration and report of the bill for a wholly indefinite time, and so practically defeat the reference of the bill to the committee (*t*).

(iii) if it proposes to amend Acts of Parliament not cognate to the bill ;

An instruction was put down to the Education Bill, 1896, empowering the committee to provide for women to be members of the education authority, which was to consist of a committee of members of County and Borough Councils, and of others to be selected by these bodies. The effect of this instruction would have been to alter the provisions of the acts which constituted County and Borough Councils, and the instruction was accordingly ruled out of order (*u*).

Several instructions were put down to the Special Register Bill, 1916, which was to make provision for framing a special register of electors, but were ruled to be beyond the scope of the bill, as their effect would have been to amend the Ballot Act or the general franchise law (*a*).

(iv) if it attempts to introduce into a bill a subject which should properly form the substance of a distinct measure ;

The purpose of an instruction, in the case of the Railway and Canal Traffic Bill, 1894, was to provide for the reform of the constitution of the Railway and Canal Commission. The Speaker intimated privately that such

(*q*) Parl. Deb. (1899) 74, c. 325.

(*r*) H. C. Deb. (1912) 39, c. 741.

(*s*) Parl. Deb. (1893) 12, c. 205. Cf. also H. C. Deb. (1912) 39, c. 741.

(*t*) Parl. Deb. (1896) 40, c. 1266.

(*u*) Parl. Deb. (1896) 41, c. 865.

(*a*) H. C. Deb. (1916) 86, c. 1749.

an instruction would not be in order, as the bill was to regulate charges; and, though it would have been in order to confer on the Commission, which was an existing body, new duties consequent on the bill, it was not in order, by an instruction, to give power to the committee to reconstruct the Commission. This was a matter to be effected by a separate bill (19 April 1894) (*b*).

(v) if its effect would be to widen the powers of the committee beyond the ways and means or money resolution, which governs the bill, or if its proposals involve a charge (see p. 716).

In the case of the Coal Mines Bill, 1930, instructions to empower the Committee to consider clauses for the acquisition of coal royalties, etc., and the transfer of the ownership of coal mines to a public authority were ruled out of order as imposing charges not covered by the money resolution (H. C. Deb. (1930) 234, c. 1721).

(2) *Superfluous*.—An instruction is superfluous and therefore out of order if it seeks to confer upon the committee power to make amendments in a bill which is already possessed by the committee under the provisions of S.O. No. 34.

An instruction was put down to the Trade Disputes and Trade Unions Bill, 1927, which was to declare and amend the law relating to trade disputes and trade unions, to empower the committee to ensure that legislation affecting the rights of organized workers should apply equally to organized employers. An amendment to this effect could be entertained without an instruction, which was therefore unnecessary. Similarly, another instruction, to render it illegal for an employer to make it a condition of employment or continuance of employment that the person in question should not be a member of a trade union, was ruled to be unnecessary, though the acceptance of such an amendment by the committee might require a slight consequential alteration in the title of the bill (*c*).

An instruction in the case of the Marriage with a Deceased Wife's Sister Bill, 1902, to limit the operation of the bill to such marriages of persons so related as shall take place after the bill became law, was ruled out of order, because the committee had power to deal with its subject-matter without an instruction (*d*).

An instruction, put down to the London Government Bill, 1899, empowering the committee to provide that no woman should be eligible for election as mayor, alderman, or councillor, was unnecessary, as an amendment for this purpose could be moved in committee without an instruction (*e*).

(*b*) For other cases of instructions ruled out of order, see Land Purchase (Ireland) Bill, Parl. Deb. (1881) 331, c. 32; Local Government (England and Wales) Bill, *ibid.* (1888) 326, c. 1440; Tithe Rent-Charge Recovery Bill, *ibid.* (1889) 339, c. 1082; Private Bill Procedure (Scotland) Bill, *ibid.* (1891) 352, c. 154, 155; Local Government (England and Wales) Bill, *ibid.* (1893) 18, c. 1089; Naval Works Bill, *ibid.* (1895) 33, c. 400; Established Church (Wales) Bill, *ibid.* (1895) 33, c. 540; Fatal Accidents Inquiry (Scotland) Bill, *ibid.* (1895) 34, c. 774; Agricultural Land Rating Bill, *ibid.* (1896) 40, c. 1267; Land Law (Ireland) Bill, *ibid.* (1896) 41, c. 978; Agricultural Rates, Congested Districts and Burgh Land Tax Relief (Scotland) Bill, *ibid.* (1896) 43, c. 1358; Voluntary Schools Bill, *ibid.* (1897) 46, c. 1154, 1155; London Government Bill, *ibid.* (1899) 70, c. 447; Demise of the Crown Bill, *ibid.* (1901) 93, c. 1259; Marriage with a Deceased Wife's Sister Bill, *ibid.* (1902) 102, c. 1111; London Water (recommitted) Bill, *ibid.* (1902) 111, c. 9; Education (Provision of Meals) (recommitted) Bill, *ibid.* (1906) 166, c. 1273; Parliament Bill, H. C. Deb. (1911) 23, c. 1815, 1849; Solicitors (Examination) Bill [Lords], *ibid.* (1917) 97, c. 1339; Trade Disputes and Trade Unions Bill, *ibid.* (1927) 206, c. 401, 402.

(*c*) H. C. Deb. (1927) 206, c. 399

(*d*) Parl. Deb. (1902) 102, c. 1111.

(*e*) Parl. Deb. (1899) 70, c. 446.

In the case of the Finance Bill, 1895, an instruction was put down to empower the committee to alter the land tax and to amend the law relating thereto. There was a similar instruction regarding estate duty. The Speaker ruled that both instructions were unnecessary, because the matters with which they dealt, if and so far as they related to a reduction of taxation, could be dealt with by the committee (*f*). Though the land tax and estate duty were not taxes levied by virtue of the current year's Finance Bill, there were precedents establishing that reductions of taxes which were not levied actually by the bill might be proposed in committee on the bill. Such amendments were covered by the ways and means resolution, "That it is expedient to amend the law relating to the Customs and Inland Revenue."

When an instruction of this nature has been moved, and, after the question has been proposed from the chair, notice has been taken that the powers proposed to be conferred by the instruction are within the competence of the committee, the Speaker has declined to put the question thereon (*g*).

(3) *Impracticable division of bill*.—As has been stated above on p. 510, an instruction to divide a bill into two or more bills is only in order if the bill is drafted in two or more distinct parts, or else, comprising more than one subject matter, lends itself to such division. If these conditions are not fulfilled an instruction to divide a bill is out of order.

The Education (No. 2) Bill, 1901, was to empower School Boards temporarily to carry on certain schools, and for sanctioning certain School Board expenses. An instruction was put down, which proposed that the permission to School Boards to maintain the schools be in one bill, and the sanctions and conditions of the local authorities in another. The Speaker ruled that, as the two objects of the bill were made dependent on one another, the bill did not lend itself to the proposed division, and the instruction was therefore out of order (*h*).

An instruction was put down to divide the Plural Voting Bill, 1913, which consisted of only one effective clause, into two bills. The Speaker ruled it out of order, as it sought to divide the indivisible (*i*).

Similar instructions in the case of the Representation of the People Bill, 1917, were also ruled out of order, as the bill did not lend itself to the proposed divisions. Another instruction to divide the bill into two, the first bill consisting of Part I dealing with the franchise, and the second consisting of the remainder of the bill, and to postpone the consideration of such first part until after the introduction of a bill dealing with the constitution and powers of a second chamber, was ruled out of order, as it led to an unlimited postponement of clause 1, and made no provision for the rest of the bill (*k*).

Two instructions were put down to divide the Debts Clearing Offices and Import Restrictions Bill, 1934, into two bills, and were ruled out of order

(*f*) Parl. Deb. (1895) 34, c. 127.

(*g*) C. J. (1884) 395. For other cases of instructions ruled out of order as unnecessary, see Representation of the People Bill, Parl. Deb. (1884) 287, c. 828; Local Government (England and Wales) Bill, *ibid.* (1889) 326, c. 1441; Purchase of Land, etc. (Ireland) Bill, *ibid.* (1890) 345, c. 346; Established Church (Wales) Bill, *ibid.* (1895) 33, c. 538, 539; Education Bill, *ibid.* (1896) 41, c. 865; Agricultural Rates, Congested Districts' and Burgh Land Tax Relief (Scotland) Bill, *ibid.* (1896) 43, c. 1358; Voluntary Schools Bill, *ibid.* (1897) 46, c. 1154; Education (England and Wales) Bill, *ibid.* (1906) 157, c. 961, 991; Finance Bill, H. C. Deb. (1909) 6, c. 1374; Poor Law Bill, *ibid.* (1934) 293, c. 1432.

(*h*) Parl. Deb. (1901) 97, c. 453.

(*i*) H. C. Deb. (1913) 54, c. 1757.

(*k*) H. C. Deb. (1917) 94, c. 162, 191.

because, whilst there was a distinction between clauses 1 and 2, the two subjects raised in those clauses were so intermixed in the remainder of the bill that it would be quite impossible to divide them (*l*).

Instructions to divide a bill have occasionally been proposed in the case of Finance Bills. In 1894 an instruction was moved to the committee on the Finance Bill, under which new rates of estate duty were proposed, to empower them to divide the bill into two parts, and in the first place to report the portion relating to customs and inland revenue, but was negatived (*m*). In 1901, however, an instruction to the committee on the Finance Bill, to enable them to divide the bill into two parts, and place the coal tax in a separate bill, was ruled out of order, on the ground that the ordinary practice of the House was to treat the Finance Bill, which contained all the taxes to meet the expenditure of the year, as far as taxation was necessary, as one bill with one object (*n*).

In 1931, an instruction to divide the Finance Bill was ruled out of order on the ground that, as an "allocation of time" order had already been passed in respect of the bill, it was impossible to give effect to the instruction. A proposal of this kind should, where necessary, be included in the "allocation of time" order (*o*).

(4) *Deletion of part of bill*.—An instruction to strike out part of a bill is out of order.

An instruction was put down to the Corn Production Bill, 1917, that Part IV be struck out, as beyond the scope of the bill. The Speaker ruled that there was no power to strike out a portion of the bill. If Part IV was beyond the scope of the bill objection should have been taken upon the second reading; and, if there was anything improper in Part IV being in the bill, it had been cured by the fact that the House had read the bill a second time (*p*).

(5) *Not specific*.—An instruction is out of order unless it is drawn in clear and specific terms, so that the committee may understand definitely what provisions the House desires that they should take into consideration.

The Land Law (Ireland) Bill, 1896, was to amend the law relating to the occupation and ownership of land in Ireland, and for other purposes relating thereto. An instruction was put down to empower the committee to make provision for the inclusion of cottages and lands in the occupation of labourers paying rent for the same to boards of guardians. The Speaker ruled that, though there was reference in one clause of the bill to labourers' cottages and to certain regulations that might be made to facilitate the purchase of land, the instruction gave no intimation to the committee what provisions the House desired them to take into consideration, and so it was out of order for want of clearness and definite direction (*q*).

An instruction put down to the Education (Scotland) Bill, 1897, which proposed to repeal part of section 19 of the Elementary Education Act, 1876, was ruled out of order, as it did not indicate expressly to the committee what part of the section it proposed to deal with (*r*).

An instruction to extend the operation of the Marriage with a Deceased Wife's Sister Bill, 1902, to the legalization of such marriages between persons related in degrees of affinity as were proposed to be legalized under a former

(*l*) H. C. Deb. (1934) 291, c. 977.

(*m*) C. J. (1894) 151.

(*n*) Parl. Deb. (1901) 95, c. 755.

(*o*) H. C. Deb. (1931) 253, c. 635.

(*p*) H. C. Deb. (1917) 95 c. 1759.

(*q*) Parl. Deb. (1896) 41, c. 977.

(*r*) Parl. Deb. (1897) 51, c. 641.



bill, was ruled out of order, because an instruction to the committee ought, on the face of it, to state plainly and clearly what further alterations in the law the committee were to consider (*s*).

#### APPLICATION OF INSTRUCTION TO RECOMMITTED BILL

The powers conferred by an instruction moved when a bill is committed for the first time continue operative, if occasion should arise for the subsequent recommitment of the bill (*t*).

#### PROCEDURE ON INSTRUCTIONS

**Notice of instructions, and of amendments thereto.**—Notice is required not only of an instruction (*u*), but of amendments thereto, which, if agreed to, would enlarge the scope of the instruction, or convert the same into a novel proposition. In order to be effective, such notice must be on the notice paper (*a*).

Prefatory words in a notice of an instruction which were in the nature of a preamble have been ruled out of order (*b*).

A Member who has given notice of an instruction which is out of order owing to its mandatory character cannot move it in a permissive form (*c*).

**Amendments to instructions.**—Any amendment moved to an instruction must be strictly relevant thereto and must be drawn in such a way that, if accepted, the question as amended would retain the form and effect of an instruction (*d*).

**Time for moving instructions.**—An instruction to a Committee of the whole House upon a bill is usually moved when the order of the day for the first sitting of the committee has been read (see p. 569), except an instruction founded on the report of a Committee of the whole House, which is given when the resolution as reported from the committee has been agreed to by the House (*e*). In the case of bills referred to standing or select committees, an instruction can be moved as soon as the bill has been committed (*f*), or subsequently (*g*).

**Member to move one instruction only.**—Pursuant to the established practice of the House, a Member cannot move more than one instruction to a committee in respect of the same bill (*h*).

(*s*) Parl. Deb. (1902) 102, c. 1111. This instruction was out of order also, because the bill proposed to amend one single alleged grievance in the Marriage Laws, and it was not proper to extend it by an instruction to other and distinct amendments of that law.

(*t*) National Education (Ireland) Bill, 1892. Instruction and committee, 15th June, bill recommitted and instruction read in committee, 16 June, C. J. (1892) 358, 369.

(*u*) Parl. Deb. (1864) 175, c. 1940, *ibid* (1882) 269, c. 218; *ibid* (1897) 51, c. 642; H. C. Deb. (1909) 2, c. 286.

(*a*) Parl. Deb. (1893) 8, c. 1684.

(*b*) See Mr. Whittaker's notice of an instruction to the committee on the Licensing Bill as handed in at the table and amended by the Speaker's directions, Notices of Motions, 1904, pp. 1621, 1676.

(*c*) Parl. Deb. (1890) 349, c. 667; H. C. Deb. (1919) 114, c. 1627.

(*d*) Mr. Speaker's ruling (private), 21 February, 1893.

(*e*) C. J. (1850) 635, *ibid*. (1921) 259; *ibid*. (1924-25) 389; Denison, 49.

(*f*) C. J. (1890) 418, 452, *ibid* (1919) 46, *ibid* (1924-25) 139.

(*g*) C. J. (1891) 192; *ibid* (1901) 324, *ibid* (1903) 280; *ibid*. (1928) 73; *ibid* (1929-30) 203.

(*h*) Parl. Deb. (1896) 39, c. 1708, *ibid* (1896) 41, c. 866.

**Debate on motion for instruction.**—Debate on a motion for an instruction must be strictly relevant thereto, and must not be directed towards the general objects of the bill to which the instruction relates (*i*), or anticipate the discussion of a clause of a bill (*k*). In accordance with the general practice of the House regarding motions and debates (see pp. 375, 426), matters which have already been decided during the current session (*l*), or have been appointed for the future consideration of the House (*m*), cannot be brought forward by an instruction. The mover of an instruction has not the right of reply (*n*).

## PROCEEDINGS IN COMMITTEE OF THE WHOLE HOUSE

When the Speaker has left the chair, the mace is removed from the table, the chairman takes his seat at the table and the clerk, having read the short title, the committee begin the consideration of the bill. As its principle has been affirmed at the second reading, the details of the bill are examined in committee, clause by clause, and line by line. The greater latitude afforded in committee, by which a Member may speak more than once to the same question, offers great facilities for this purpose.

### ORDER IN WHICH BILL IS CONSIDERED

The text of a bill is considered in committee in the following order :

- (1) Clauses.
- (2) New Clauses.
- (3) Schedules.
- (4) New Schedules.
- (5) Preamble (if any).
- (6) Title (if amendment thereto is required).

### POSTPONEMENT OF PREAMBLE

By S.O. No. 35, the preamble stands postponed without question put until after the consideration of the clauses and schedules. This practice is adopted because the House has already affirmed the principle of the bill on the second reading, and it is therefore the province of the committee to settle the clauses first, and then to consider the preamble in reference to the clauses only. The preamble is thus made subordinate to the clauses instead of governing them.

An instruction to a committee that they have power to suspend S.O. No. 35 has been ruled to be out of order (*o*).

### NOTICE OF AMENDMENTS IN COMMITTEE

It is usual, though not obligatory, to give notice of an amendment to a bill in committee. Notice should be given whenever possible of every

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(*i*) Parl. Deb. (1889) 350, c. 1073; *ibid.* (1890) 349, c. 676; *ibid.* (1893) 18, c. 1089; *ibid.* (1905) 149, c. 1095; *ibid.* (1906) 157, c. 963, 983; H. C. Deb. (1912) 39, c. 730; *ibid.* (1912) 44, c. 1787, 1789, 1798.  
 (*k*) H. C. Deb. (1912) 39, c. 726, 735.  
 (*l*) Parl. Deb. (1870) 201, c. 534; *ibid.* (1888) 326, c. 1440.  
 (*m*) Parl. Deb. (1860) 158, c. 1954.  
 (*n*) Parl. Deb. (1867) 186, c. 1443.  
 (*o*) Parl. Deb. (1893), 12, c. 345.

important amendment, as the moving of such an amendment without notice causes obvious difficulty and inconvenience to the committee.

The notices of amendments are printed and circulated with the Votes and Proceedings. On the day upon which a bill is to be considered in committee, the amendments are "marshalled" on the notice paper in the order in which, if carried, they would stand in the bill, or, if relating to the same point in the bill, in the order in which they were first handed in, except that amendments by the Member in charge of the bill take precedence of all others offered at the same place in a clause. Sometimes, in the case of an important bill, when a great number of amendments have been handed in, a marshalled list of amendments is printed and circulated for the convenience of Members, before the day for which the committee stage of the bill is set down.

To avoid the repetition of identical amendments on the notice paper, the names of the Members who have handed in an identical amendment are printed together at the head of the amendment. Only six names of Members are allowed to be attached to an amendment after its first appearance on the notice paper. This practice cannot be applied to identical notices of a new clause unless they are handed in consecutively, as new clauses are considered in the order in which the notices of them were handed in. This arrangement, which was begun in connection with the committee stage of the National Insurance Bill in session 1911, has been adopted for the committee and report stages of all public bills and for bills before the standing committees. If the Member or Members who have given notice of an amendment are absent, or do not desire to move it, the amendment can be moved by any other member of the committee (*p*).

#### CLAUSE UNDER CONSIDERATION

Proceedings on a bill begin by the chairman calling the number of the first clause. The calling of a clause by the chairman brings it under the consideration of the committee, but does not entitle a Member to speak generally upon the clause, as there is no question before the committee until an amendment has been moved, or the question proposed "That this clause stand part of the bill" (*q*). If no notice has been given of an amendment to any part of the clause and no Member rises to move an amendment, the chairman at once proposes the question "That this clause stand part of the bill," and when this has been disposed of, proceeds to the next clause. While, strictly, a separate question is necessary on each clause, in the case of non-contentious bills, in order to save time, the question has sometimes been put on groups of clauses (*r*).

#### AMENDMENTS OF WHICH NOTICE HAS BEEN GIVEN

If notice has been given of any amendments, the chairman calls on the Member who has given notice of the first amendment which he has decided to select in virtue of the powers given him by S.O. No. 28 (see p. 453).

(*p*) H. C. Deb. (1911) 27, c. 975, 1148.

(*q*) Parl. Deb. (1866) 184, c. 536.

(*r*) H. C. Deb. (1939) 349, c. 2205. See also the order on the Government of India Bill, C. J. (1934-35) 82; H. C. Deb. (1935) 298, c. 146.

In exercising the discretion given him by the standing order, it should be observed that the chairman may decline to select any amendments to the clause and proceed at once to propose the question "That this clause stand part of the bill." If, however, a Member has been called upon, he moves his amendment, and the chairman then reads its terms, stating the page and line in the bill in which the alteration is to be made, and proposes the question thereon in the ordinary form. Sometimes the chairman selects the amendments to be moved and announces the selection before calling the Member in whose name the first amendment which he has decided to select stands.

#### AMENDMENTS OF WHICH NO NOTICE HAS BEEN GIVEN

Amendments of which notice does not appear on the notice paper may be moved if the chairman allows this course to be adopted. When it is desired to propose an amendment without notice, the chairman should be informed beforehand of its terms and of the exact place in the clause where it would occur, in order that, if he thinks fit to select it, he may call on the proposer to move it when that place is reached.

It is important, therefore, that Members who wish to offer amendments in committee should watch carefully the progress of the bill, for, if a decision has been reached on an amendment relating to a later part of the clause, amendments in an earlier place in that clause cannot be proposed.

#### WITHDRAWAL OF AMENDMENTS

When once the question on an amendment has been proposed from the chair, it can only be withdrawn at the request of the Member who moved it and by the unanimous leave of the committee (*s*). The effect of withdrawing an amendment is to leave the bill in precisely the same condition as if the amendment had not been proposed, and it is therefore possible for any other amendment to be proposed, provided that it does not extend further back than the last word upon which the committee have already given a decision.

#### AMENDMENTS AT SAME PLACE IN BILL, OR DISCUSSED TOGETHER

When several amendments are offered at the same place in a clause an amendment to leave out words in order to insert other words takes precedence of an amendment merely to leave out words (*t*). Subject to this qualification, the chairman normally calls such amendments in the order in which they appear upon the paper, though he may decide to exercise his powers of selection under S.O. No. 28. It is also within his discretion to decide that an amendment offered at one place should be moved at another place in the same clause, or in some other clause, or even that an amendment should be moved as a new clause.

For the sake of convenience, and with the consent of the committee, the chairman frequently permits debate to range over several amendments which raise different aspects of the proposal in the actual amendment

(*s*) H. C. Deb. (1928) 219, c. 185.

(*t*) Parl. Deb. (1893) 18, c. 1162; H. C. Deb. (1911) 28, c. 1912 (consideration).

under consideration (*u*). This latitude in debate is usually allowed on the understanding that, when the later amendments are called, they may be divided on, if desired, but not discussed (see also p. 529, New Clauses).

#### SAFEGUARDING OF AMENDMENTS

Whenever several amendments are about to be moved to the same part of the clause, the chairman, if necessary, proposes an amendment to leave out words in such a form as not to exclude any later amendments. With this end in view, the question is therefore proposed, that certain only of the words proposed to be left out stand part of the clause (*a*). If this question is agreed to, that is, if the committee decide that the words proposed to be left out should stand part, it is still possible to move to leave out subsequent words. On the other hand, if the question is negatived, and the proposed words are left out, the effect is precisely the same as if the question had been proposed in full; the remaining words covered by the amendment are struck out without any further question being put (*b*), and the subsequent amendments, which it was desired to safeguard, fall.

#### ADMISSIBLE AMENDMENTS

Amendments may be made in every part of the bill, whether in the clauses or the schedules. Clauses may be left out and new clauses and schedules added. Amendments to the preamble and title are also admissible where amendments have been made to the bill which render this necessary.

The marginal notes or short titles of clauses and the headings of parts of a bill, however, do not form part of the bill and are not open to amendment (*c*). Furthermore, amendments cannot be moved to the granting or enacting words of bills for granting aids or supplies to the Crown, or to the enacting words of other bills. These words are part of the framework of the bill and are not submitted to the committee (*d*).

Amendments were allowed to be moved to the enacting words of the Import Duties Bill, 1932, the chairman having ruled privately that previous decisions did not apply in this case, since the proposed enacting words included new matter not ordinarily inserted in Money Bills. Two amendments were moved to the enacting words in their natural order at the beginning of the bill, as those words were not in the nature of a preamble (*e*).

#### INADMISSIBLE AMENDMENTS

The special rules of order respecting amendments to a bill in committee are classified below. These rules relate primarily to amendments to clauses, but will be found applicable for the most part to amendments to

(*u*) H. C. Deb. (1939-40) 358, c. 62-7; see also *ibid.* (1937-8) 330, c. 1681-2.

(*a*) Parl. Deb. (1866) 181, c. 539; *ibid.* (1866) 184, c. 445.

(*b*) C. J. (1907) 348; Parl. Deb. (1907) 178, c. 1277.

(*c*) Parl. Deb. (1896) 41, c. 873; *ibid.* (1906) 166, c. 1085 (ruling in the Lords); H. C. Deb. (1917) 95, c. 1761; *ibid.* (1918) 105, c. 1995.

(*d*) Parl. Deb. (1888) 332, c. 1010 (ruling by the Speaker); *ibid.* (1889) 339, c. 218; *ibid.* (1900) 80, c. 1364; H. C. Deb. (1909) 11, c. 2161; *ibid.* (1909) 12, c. 1317 (ruling by the Speaker on consideration); *ibid.* (1912) 41, c. 2518; *ibid.* (1920) 132, c. 649.

(*e*) H. C. Deb. (1932) 261, c. 1871-73.

schedules. It may be stated here that they also apply generally to amendments proposed on the consideration of a bill, as amended; but at that stage there are special restrictions which are described below on p. 538-9.

An amendment which is out of order on any of the following grounds cannot be proposed from the chair :

(1) An amendment is out of order if it is irrelevant to the subject matter (*f*) or beyond the scope of the bill (*g*), or if it is irrelevant to the subject matter (*h*), or beyond the scope of the clause under consideration (*i*). Amendments, which are irrelevant to the clause under consideration, should, as a general rule, if they are within the scope of the bill, be moved as new clauses.

(2) An amendment cannot be admitted, if it is governed by or dependent upon amendments which have already been negatived (*k*).

(3) An amendment must not be inconsistent with, or contrary to, the bill as so far agreed to by the committee (*l*), nor must it be inconsistent with a decision of the committee upon a former amendment (*m*).

(4) Amendments are inadmissible, if they refer to, or are not intelligible without subsequent amendments or schedules, of which notice has not been given (*n*), or if they are otherwise incomplete (*o*).

(5) An amendment, which is equivalent to a negative of the bill, or which would reverse the principle of the bill as agreed to on the second reading, is not admissible (*p*). Where the scope of a bill is very restricted, it is not always easy to grasp the full effect of this rule, but the method of its application can be judged from the two following examples :

The scope of the Parliamentary Elections (No. 2) Bill, 1880, being restricted to the repeal of a section in a statute, an amendment which proposed the continuance and extension of that section was ruled out of order. The

(*f*) C. J. (1856) 213; Parl. Deb. (1865) 179, c. 521; *ibid.* (1881) 258, c. 1451; *ibid.* (1893) 14, c. 918; *ibid.* (1896) 41, c. 12, 1702 (consideration), 1704 (consideration); *ibid.* (1898) 60, c. 720; *ibid.* (1899) 74, c. 326; *ibid.* (1900) 81, c. 753, 1035; *ibid.* (1902) 114, c. 912; *ibid.* (1902) 116, c. 1043; H. C. Deb. (1919) 120, c. 359.

(*g*) Parl. Deb. (1905) 147, c. 311; *ibid.* (1906) 158, c. 355; H. C. Deb. (1912) 41, c. 2859; *ibid.* (1914) 61, c. 128, 1069; *ibid.* (1914) 68, c. 745; *ibid.* (1916) 78, c. 661; *ibid.* (1917) 99, c. 526; *ibid.* (1918) 105, c. 1070; *ibid.* (1918) 108, c. 2045; *ibid.* (1919) 121, c. 1985; *ibid.* (1923) 165, c. 1357; *ibid.* (1924) 169, c. 1593; *ibid.* (1926) 196, c. 1627; *ibid.* (1930) 234, c. 2123, 2126, 2129; *ibid.* (1932) 264, c. 595.

(*h*) Parl. Deb. (1857) 147, c. 1189, 1190, 1198; *ibid.* (1877) 232, c. 1242; *ibid.* (1877) 233, c. 359.

(*i*) H. C. Deb. (1914) 68, c. 739; *ibid.* (1917) 95, c. 1048.

(*k*) Parl. Deb. (1862) 167, c. 112; *ibid.* (1872) 211, c. 137, 2026; *ibid.* (1881) 258, c. 1333; *ibid.* (1885) 296, c. 800; *ibid.* (1886) 305, c. 83; *ibid.* (1899) 74, c. 851; *ibid.* (1902) 111, c. 962-65; H. C. Deb. (1910) 18, c. 647; *ibid.* (1914) 61, c. 128; *ibid.* (1919) 117, c. 1739.

(*l*) Parl. Deb. (1881) 258, c. 1239, 1455; *ibid.* (1896) 41, c. 360; *ibid.* (1902) 113, c. 493; *ibid.* (1908) 198, c. 883 (consideration); H. C. Deb. (1911) 30, c. 449; *ibid.* (1912) 44, c. 2199.

(*m*) H. C. Deb. (1911) 22, c. 1666; *ibid.* (1915) 75, c. 927; *ibid.* (1916) 83, c. 1738; C. J. (1920) 303; H. C. Deb. (1920) 132, c. 319.

(*n*) Tithe Rent-Charge Recovery Bill, 29 January, 1891, private ruling; Parl. Deb. (1899) 70, c. 449; *ibid.* (1902) 112, c. 203; H. C. Deb. (1909) 7, c. 496; *ibid.* (1911) 23, c. 2251; *ibid.* (1917) 97, c. 1284; *ibid.* (1917) 98, c. 96; *ibid.* (1919) 119, c. 1499; *ibid.* (1921) 143, c. 2205; *ibid.* (1939-40) 357, c. 2293-5.

(*o*) H. C. Deb. (1918) 106, c. 1703.

(*p*) H. C. Deb. (1910) 19, c. 2398; *ibid.* (1917) 92, c. 790, 823, 824, 1679; *ibid.* (1917) 100, c. 1875; *ibid.* (1918) 107, c. 136; *ibid.* (1943-44) 400, c. 1809.

chairman stated that, though the committee had full power to amend, even to the extent of nullifying the provisions of a bill, they could not insert a clause reversing the principle which the bill, as read a second time, sought to affirm (*q*).

In the case of the London Education Bill, 1903, which was to extend a statute to London with certain modifications, a number of amendments to the schedule were ruled out of order, on the ground that taken together they would not be modifications of the principal Act specially applicable to London (*r*).

(6) An amendment to leave out a clause is not in order, as the proper course is to vote against the clause standing part of the bill. Consequently it is out of order to propose to leave out the only effective words of a clause, or the words upon which the rest of the clause is dependent, or to offer any other amendment which is equivalent to a direct negative of the clause (*s*).

This principle has also been applied in the case of a clause substituting a new section for a section in an existing Act of Parliament when an amendment is offered to leave out all the words of the new section and insert another new section instead thereof (*t*).

Furthermore, an amendment may not be moved to insert words at the beginning of a clause with a view to bringing forward an alternative scheme to that contained in the clause (*u*), or to leave out the whole substance of a clause in order to insert different provisions (*a*), or to effect a redrafting of the clause (*b*). In all such cases the question that the clause stand part of the bill should be negatived and a new clause brought up at the proper time. If, however, an amendment has already been made at the beginning of a clause and it is afterwards proposed to leave out the remainder of the clause, the latter amendment has been held to be regular (*c*).

(7) If an amendment would make the clause which it is proposed to amend unintelligible or ungrammatical, or if it is incoherent and inconsistent with the context of the bill, it is out of order.

When a proposed amendment had been so amended as to form an incoherent question, the chairman stated that if no further amendment were proposed he should proceed with the question which next arose upon the clause (*d*).

(*q*) Parl. Deb. (1880) 251, c. 1134-37.

(*r*) Parl. Deb. (1903) 122, c. 1886; cf. also the Speaker's ruling on a proposed amendment to the second schedule of the Air Force Bill, H. C. Deb. (1917) 99, c. 817.

(*s*) H. C. Deb. (1915) 72, c. 1961; *ibid.* (1915) 74, c. 1648; *ibid.* (1916) 82, c. 473; *ibid.* (1917) 95, c. 1048; *ibid.* (1920) 129, c. 92; *ibid.* (1920) 131, c. 2421.

(*t*) Stg. Co. Deb. (1936-37) Co. A. 166-7 (Marriage Bill); *ibid.* (1937-38) Co. A. 785-6 (Patents, etc. (International Conventions) Bill [Lords]).

(*u*) Parl. Deb. (1881) 261, c. 1522; *ibid.* (1896) 41, c. 873-75, *ibid.* (1899) 74, c. 326; *ibid.* (1908) 197, c. 1107.

(*a*) Parl. Deb. (1851) 116, c. 666; *ibid.* (1869) 196, c. 74; *ibid.* (1870) 200, c. 1057; cf. H. C. Deb. (1911) 30, c. 1938, where the same ruling was applied in the case of an amendment to leave out part of the first subsection of a clause in order to insert an alternative scheme. Cf. also the Chairman's ruling on the Ottawa Agreements Bill, H. C. Deb. (1932) 269, c. 1330-38.

(*b*) H. C. Deb. (1916) 85, c. 2163.

(*c*) Parl. Deb. (1851) 200, c. 1058.

(*d*) C. J. (1877) 73.

(8) Amendments which are vague (*e*), trifling, (*f*), or tendered in a spirit of mockery (*g*), are held to be out of order.

(9) An amendment is out of order if it is offered at a wrong place in the bill (*h*).

(10) No amendment should be admitted if it is in the form of a "previous question" (see p. 383).

(11) Amendments to a bill proposing that the address or resolution of one House of Parliament should effect the repeal of the bill (*i*), or that the provisions of a bill should be subject to a referendum (*k*), have been ruled out of order as proposing changes in legislative procedure which would be contrary to constitutional practice.

(12) An amendment is irrelevant and cannot be admitted if it seeks to delay the coming into force of a bill relating to England only, until a similar bill should have been passed for Scotland (*l*).

(13) Amendments or new clauses creating public charges cannot be proposed if no money resolution or ways and means resolution has been passed, or if the amendment or clause is not covered by the terms of the resolution. This rule, which is of fundamental importance, is fully explained in Chapter XXIV.

An amendment has been ruled out of order on the ground that it would, if carried, convert a public bill into a hybrid bill (*m*).

Certain regularly recurring bills, which have a very strictly defined purpose, afford particularly clear illustrations of the general rules of relevancy set out above.

(1) **Expiring Laws Continuance Bills.**—The operative clause of an Expiring Laws Continuance Bill prescribes that the Acts mentioned in the schedule (or schedules) shall be continued until a specified date, and the amendments which may be moved to such a bill are subject to the following limitations :

An amendment is outside the scope of the bill if it seeks to amend the provisions of the Acts proposed to be continued (*n*), or to make permanent such Acts (*o*), or to include in the bill a statute which has already ceased to have effect (*p*).

An amendment may be moved to the operative clause of the bill to alter the date to which the Act (or Acts) in the schedule (or schedules) are to be continued (*q*).

(*e*) Parl. Deb. (1908) 195, c. 551; H. C. Deb. (1915) 73, c. 558; *ibid.* (1915) 75, c. 887; *ibid.* (1916) 78, c. 235; *ibid.* (1917) 92, c. 1713. In the case of a new clause on consideration, H. C. Deb. (1913) 53, c. 1195.

(*f*) H. C. Deb. (1914) 61, c. 189.

(*g*) Parl. Deb. (1882) 270, c. 862; *ibid.* (1898) 58, c. 461; H. C. Deb. (1910) 19, c. 1718 (consideration); *ibid.* (1915) 71, c. 2172 (consideration).

(*h*) Parl. Deb. (1893) 57, c. 54; *ibid.* (1898) 60, c. 651, *ibid.* (1899) 71, c. 163.

(*i*) Parl. Deb. (1896) 41, c. 361.

(*k*) H. C. Deb. (1917) 94, c. 1634; *ibid.* (1920) 131, c. 148.

(*l*) Parl. Deb. (1896) 41, c. 1702 (consideration).

(*m*) Special Areas (Amendment) Bill, H.C. Deb. (1936-37) 322, c. 2177 and 2181.

(*n*) Parl. Deb. (1874) 221, c. 1018; *ibid.* (1887) 321, c. 190. Cf. also H. C. Deb. (1925) 188, c. 240, 242.

(*o*) Parl. Deb. (1902) 113, c. 553; *ibid.* (1906) 167, c. 476; H. C. Deb. (1912) 42, c. 2101.

(*p*) Parl. Deb. (1906) 167, c. 489.

(*q*) H. C. Deb. (1936) 318, c. 1974.



The usual principle, that the schedule is dependent on a clause of the bill, must be observed, and no amendments can be made to the schedule, so as to make it inconsistent with the clause upon which it is dependent.

The continuance of any Act or part thereof must be discussed on the schedule of the bill when that Act is reached there, and not on clauses of the bill (*r*). Thus an amendment may be moved to the schedule to exclude from continuance any Act or distinct provisions of any Act (*s*), and, conversely, it is also in order to move to include in the schedule an Act or distinct provisions of an Act which is still in force but would cease to have effect if steps were not taken to continue its existence (*t*).

The Expiring Laws Act of 1922, in addition to continuing certain Acts, made permanent or repealed other Acts (*u*), the title being drafted so as to include such provisions.

(2) **Bills to confirm agreements.**—When a bill is introduced to give effect to an agreement or to confirm a scheme and the agreement or scheme is scheduled to the bill as a completed document, amendments cannot be made to the schedule (*a*), but an amendment to the clauses of the bill for the purpose of withholding legislative effect from the document contained in the schedule is in order (*b*), as are also amendments to those clauses which deal with matters not determined by the document contained in the schedule (*c*).

(3) **Statute Law Revision Bills.**—An amendment cannot be moved to a statute law revision bill to deal with an act still in force, as such a bill deals solely with statutes no longer in force (*d*).

(4) **Consolidation Bills.**—Where the title of a bill is only to *consolidate* the law on a particular subject, it is out of order to amend the provisions of the statutes which by the bill are to be consolidated and fused together (*e*), as any such amendments are regarded as outside the scope of the bill, and were not contemplated when the House gave it a second reading (*f*). If they are justified by the circumstances, the following amendments may be excepted from this rule and be moved to a Consolidation Bill:—

An amendment to change the date on which the bill is to come into operation if, owing to the date when the bill is being considered, it would be inconvenient to bring it into operation on the date laid down in the bill, or if it is desired that “the appointed day” for the bill coming into operation should be not earlier than a certain date (*g*).

(*r*) Parl. Deb. (1904) 139, c. 1697, *ibid.* (1908) 193, c. 1011; H. C. Deb. (1909) 12, c. 425 (ruling by the Speaker). Cf. also H. C. Deb. (1934) 293, c. 485-94.

(*s*) Parl. Deb. (1874) 221, c. 1018, *ibid.* (1887) 321, c. 190; H. C. Deb. (1921) 146, c. 1007.

(*t*) Parl. Deb. (1906) 167, c. 489.

(*u*) 12 & 13 Geo. 5, c. 50. See also 15 & 16 Geo. 5, c. 76, and 22 Geo. 5, c. 2.

(*a*) H. C. Deb. (1917) 98, c. 2408 (ruling by the Speaker); *ibid.* (1917) 99, c. 1846; *ibid.* (1917) 100, c. 898-99 (ruling by the Speaker on consideration)

(*b*) H. C. Deb. (1922) 158, c. 537; *ibid.* (1932) 269, c. 1330.

(*c*) H. C. Deb. (1919) 120, c. 1823

(*d*) Parl. Deb. (1890) 346, c. 1618.

(*e*) H. C. Deb. (1921) 146, c. 1140.

(*f*) See H. C. Deb. (1922) 156, c. 465 (ruling by the Speaker).

(*g*) H. C. Deb. (1921) 146, c. 1142.

An amendment which would make the words of the bill express more clearly the law as it stands (*h*).

An amendment which seeks to bring the bill into conformity with the existing law, if the chairman is satisfied that the bill, as drafted, would effect an alteration in the law (*i*).

Where the title of the bill is to *consolidate and amend*, or to *consolidate with amendments*, the law, amendments may be moved to the statutes which are to be consolidated (*k*).

#### AMENDMENT TO LEAVE OUT SUBSECTION OF A CLAUSE

When a clause contains two or more subsections which are not mutually dependent, an amendment to leave out each subsection is in order (*l*). When the subsequent subsections are dependent upon or ancillary to the first subsection, an amendment to the clause to leave out that subsection is out of order, as the effect of such an amendment being carried would be to destroy the clause. The decision that should be reached, and the discussion that should properly arise, on the question of the clause standing part of the bill would thus be anticipated (*m*). The same principle has been applied to an amendment to leave out the essential words of a subsection (*n*).

#### AMENDMENT RULED OUT OF ORDER AFTER DISCUSSION BEGUN

If it should appear in the course of discussion that an amendment or new clause which has been allowed to be moved is out of order, the chairman directs the committee's attention to the fact and withdraws the amendment or clause from the consideration of the committee (*o*). The discussion of an amendment has shown :

- (1) That the question raised thereby had already been decided by the committee (*p*) ;
- (2) That the amendment was inconsistent with a previous decision of the committee (*q*), or referred to a part of the clause prior to the part last amended (*r*) ;
- (3) That it would have no effect, or was unnecessary (*s*) ;
- (4) That it was beyond the scope of the bill (*t*), or would constitute, if agreed to, a negative of the bill (*u*) ;

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- (*h*) H. C. Deb. (1921) 146, c. 806.  
 (*i*) H. C. Deb. (1921) 146, c. 1143.  
 (*k*) Local Government Bill [Lords], C. J. (1932-33) 311, 329.  
 (*l*) H. C. Deb. (1915) 75, c. 116 ; *ibid.* (1916) 84, c. 1954 ; *ibid.* (1917) 94, c. 1633.  
 (*m*) H. C. Deb. (1909) 7, c. 493 ; *ibid.* (1912) 39, c. 748 ; *ibid.* (1913) 54, c. 1757 ; *ibid.* (1915) 75, c. 105, 200 ; *ibid.* (1917) 95, c. 2054 ; *ibid.* (1918) 107, c. 1577.  
 (*n*) H. C. Deb. (1912) 44, c. 2652.  
 (*o*) C. J. (1914) 155, H. C. Deb. (1914) 61, c. 1021, 1069 ; C. J. (1917-18) 153 ; *ibid.* (1918) 152.  
 (*p*) C. J. (1887) 257.  
 (*q*) C. J. (1896) 411.  
 (*r*) C. J. (1931-32) 91 ; H. C. Deb. (1932) 262, c. 229.  
 (*s*) C. J. (1922) 215 ; H. C. Deb. (1922) 155, c. 1199 ; C. J. (1924-25) 41 ; H. C. Deb. (1924) 179, c. 1281.  
 (*t*) C. J. (1907) 348 ; Parl. Deb. (1907) 178, c. 1250 ; C. J. (1914-16) 307 ; H. C. Deb. (1915) 76, c. 1435 ; C. J. (1929-30) 178 ; H. C. Deb. (1930) 234, c. 1815-27 ; C. J. (1929-30) 223 ; H. C. Deb. (1930) 236, c. 511-17 ; C. J. (1930-31) 63 ; H. C. Deb. (1930) 246, c. 686 ; C. J. (1870) 399 (new clause) ; C. J. (1914) 154, 155 ; H. C. Deb. (1914) 61, c. 1069 (new clause).  
 (*u*) C. J. (1912-13) 540 ; H. C. Deb. (1913) 48, c. 757-73.

Occasions may also arise when, after discussion, it appears that a proposed amendment is beyond the ways and means resolution upon which the bill is founded, or the money resolution, which authorizes expenditure under the bill, and such amendments are then ruled out of order (see p. 662).

In the same way, on consideration of a bill, amendments have been ruled out of order after discussion has begun. It has been found that an amendment was outside the scope of the bill (*a*), or was inconsistent with an earlier provision of the bill (*b*), or that it would be without effect (*c*), or was unnecessary (*d*).

#### PROCEEDINGS UPON ITALICISED WORDS OR BLANKS

It has already been explained (see p. 490) that any clause or part of a clause which imposes a charge is printed in italics. Italicised words, which are also known as blanks, cannot be considered by the committee, unless the money resolution authorizing them has been agreed to by the House. By S.O. No. 36 no question is put for the filling up of the words printed in italics, unless exception be taken thereto, and, if no alteration has been made in such words and no amendment has been made elsewhere, the bill is reported without amendment. If it is desired to alter the italicised words, an amendment can be moved in the ordinary manner, provided that it falls within the scope of the money resolution (*e*); but any increase or extension of the charge authorized by the italicised words is only in order to the extent to which the scope of the money resolution exceeds the scope of the italicised words (see p. 736).

In bills brought from the Lords where words have been left out or inserted in that House to avoid questions of privilege (see p. 767-8) and are printed in the bill underlined and in brackets, the insertion or leaving out of these words in committee in the Commons must be moved as an amendment. According to recent practice, notice is sometimes, but not always, given of such amendments.

#### DIVISION OF CLAUSES

The committee have power to divide one clause into two (*f*), or decide that the first part of a clause (*g*), or the first part of a clause with a schedule, shall be considered as an entire clause (*h*). This practice, however, would now appear to be obsolete.

#### TRANSFER OF CLAUSES

A clause or series of clauses may be transferred, on motion, from one place in a bill to another place, specified in the motion (*i*).

(*a*) C. J. (1926) 404; H. C. Deb. (1926) 200, c. 2468.

(*b*) C. J. (1923) 267; H. C. Deb. (1923) 166, c. 1304.

(*c*) C. J. (1922) 53; H. C. Deb. (1922) 151, c. 1360.

(*d*) C. J. (1920) 163; H. C. Deb. (1920) 129, c. 725; C. J. (1922) 280; H. C. Deb. (1922) 156, c. 2168-71; C. J. (1922) 264; H. C. Deb. (1922) 156, c. 1418 (new clause).

(*e*) Stg. Co. Deb. (1934-35), Sc. Co. 805, Housing (Scotland) Bill.

(*f*) C. J. (1834) 409; *ibid.* (1868-69) 384; H. C. Deb. (1920) 132, c. 2689.

(*g*) C. J. (1831-32) 80.

(*h*) C. J. (1830-31) 728.

(*i*) Suppl. to Votes (1937-8) p. 1924; C. J. (1937-8) 379.

POSTPONEMENT OF CLAUSES

A clause may be postponed, upon motion (*k*), provided that no amendment has been made thereto (*l*), and that no proposed amendment has been negatived, and provided that the question for its standing part of the bill has not been proposed (*m*). In any of these cases the postponement of a clause is irregular. If, however, an amendment has been proposed and withdrawn the clause may be postponed (*n*). A part of a bill (*o*), or a consecutive group of clauses *en bloc*, may also be postponed.

Where a clause had been amended, and it was desired to postpone further consideration of its subject matter, the clause, as amended, was negatived (*p*).

A proposal to postpone the only effective clause of a bill until the subordinate clauses have been considered (*q*), or to postpone part of a clause (*r*), is out of order.

Upon a question for the postponement of a clause, the debate is limited to the simple question of postponement, and may not be extended to the merits of the bill (*s*) or the clause (*t*). Postponed clauses are considered after the other clauses of the bill have been disposed of, and before any new clauses are brought up. They have also been considered, under special circumstances, after new clauses (*u*) or a certain new clause (*a*), or certain new clauses (*b*), or certain other clauses (*c*), or some of the schedules of the bill (*d*). Postponed clauses when reached have been postponed, together with any new clauses, until after the consideration of the schedules of the bill (*e*).

In committee on the Churches (Scotland) Bill, 1905, a clause was postponed until after the schedule and any new schedule; and the schedule, when reached, was postponed until after the postponed clause (*f*).

In committee on the Coal Mines Bill, 1930, Part I was postponed till after the new clauses, other than those in which Part I or any clause in that part was mentioned. Subsequently, another clause was postponed till after the new clauses and Part I had been disposed of (*g*).

In the standing committee on the Cinematograph Films Bill, 1937, clause 4 and all subsequent clauses of the bill were postponed until after the con-

(*k*) Parl. Deb. (1871) 207, c. 74; C. J. (1934-35) 84.

(*l*) Parl. Deb. (1871) 207, c. 721.

(*m*) H. C. Deb. (1935-6) 313, c. 161.

(*n*) C. J. (1873) 340; C. J. (1917) 200; H. C. Deb. (1917) 97, c. 1251; C. J. (1917) 216; H. C. Deb. (1917) 98, c. 344.

(*o*) C. J. (1929-30) 177; *ibid.* (1941-2) 380, c. 583.

(*p*) C. J. (1918) 105; H. C. Deb. (1918) 106, c. 1284.

(*q*) Parl. Deb. (1899) 74, c. 325; *ibid.* (1904) 139, c. 1221; H. C. Deb. (1912) 39, c. 744; *ibid.* (1916) 82, c. 472; *ibid.* (1918) 110, c. 1503.

(*r*) Parl. Deb. (1901) 97, c. 453; *ibid.* (1904) 139, c. 1220.

(*s*) Parl. Deb. (1871) 207, c. 1378; *ibid.* (1887) 318, c. 145; *ibid.* (1896) 41, c. 870.

(*t*) Parl. Deb. (1893) 12, c. 350; *ibid.* (1902) 111, c. 48; *ibid.* (1904) 135, c. 812; *ibid.* (1904) 136, c. 504; *ibid.* (1906) 162, c. 1721; H. C. Deb. (1909) 6, c. 1376; *ibid.* (1916) 81, c. 1884; *ibid.* (1918) 110, c. 1504.

(*u*) C. J. (1877) 235; *ibid.* (1887) 206, 210; *ibid.* (1893-94) 455; *ibid.* (1906) 407; *ibid.* (1929-30) 387.

(*a*) C. J. (1867) 141, 149; *ibid.* (1909) 461.

(*b*) C. J. (1917-18) 177.

(*c*) C. J. (1867) 248, 252; *ibid.* (1908) 440, 441; *ibid.* (1927) 234.

(*d*) C. J. (1875) 328, 425; *ibid.* (1917-18) 216, 223.

(*e*) C. J. (1920) 273.

(*f*) C. J. (1905) 334, 335, 346.

(*g*) C. J. (1929-30) 177, 189.

sideration of two new clauses standing in the name of the Minister in charge of the bill (*h*).

#### CLAUSES RECEIVED PURSUANT TO INSTRUCTIONS

When instructions have been given by the House for the purpose, the committee may receive clauses or make provision in the bills committed to them which they could not otherwise have considered (*i*).

#### QUESTION FOR CLAUSE STANDING PART OF A BILL

When a clause has been amended, the question put from the chair is, "That this clause, as amended, stand part of the bill"; and no other amendment can be proposed to a clause after this question has been proposed from the chair (*k*). Debate upon this question must be confined to the clause, as amended, and must not extend to a discussion of the circumstances under which particular amendments were made or to a review in detail of the proceedings on the clause (*l*). It has been ruled that when the question, "That this clause stand part of the bill," has been proposed from the chair, it must be agreed to or negatived, as it necessarily follows upon the consideration of the clause and is not a motion made by any Member which he could ask leave to withdraw (*m*).

#### NEW CLAUSES

New clauses are normally considered after the clauses of the bill have been disposed of, and the insertion of any that are passed in their proper place in the bill is not fixed by the committee, but is left to be settled between the Member in charge of the bill and the Public Bill Office, which is responsible for reprinting the bill as amended. New clauses are considered in the order in which they stand on the notice paper, that is, the order in which they have been handed in, except that clauses offered by the Member in charge of the bill are placed first (*n*).

The procedure on a new clause gives an opportunity for a debate on its principle and then for the proposal of amendments before its incorporation in the bill. The Member, in whose name it stands, on being called by the chairman, "brings up" the clause in a speech, stating the reasons for its adoption. Under the provisions of S.O. No. 37 a new clause is read the first time without question put, and the reading of the marginal note by the clerk is taken as complying with the standing order.

(*h*) Stg. Co. Deb. (1937-38) Co. A. 67-71 (Cinematograph Films Bill).

(*i*) For the extent to which the rejection of an instruction affects the power of a committee in considering amendments which trench upon the purport of the rejected instruction, see the chairman's ruling on the Tithe Rent Charge Recovery Bill, Parl. Deb. (1889) 339, c. 1185, 1228.

(*k*) Parl. Deb. (1857) 147, c. 1191.

(*l*) Parl. Deb. (1893) 12, c. 1180; *ibid.* (1894) 20, c. 503, 696; H. C. Deb. (1918) 106, c. 2069, 2073, *ibid.* (1919) 122, c. 491; *ibid.* (1921) 147, c. 954; *ibid.* (1935) 300, c. 1356.

(*m*) Hypothec Abolition (Scotland) Bill, 1 April 1879 (private ruling).

(*n*) Such Member does not forfeit precedence for his clauses, if he has taken them off the Paper by agreement with the Chair for technical reasons. Private ruling, 17 June 1941 (Decision 2176). See Supplement to the Votes (1940-41) 740, 747, 772.

The question, that the clause be read a second time, is then proposed, and, if this is agreed to, amendments may be moved in the ordinary manner. Finally, the question is put, that the clause, or the clause as amended, be added to the bill.

In committee on the Finance Bill, 1937, several new clauses and schedules were proposed by the Government, the first clause imposing the charge of the National Defence Contribution, the remaining clauses and schedules dealing with the "machinery" of the tax. With the consent of the committee, the chairman allowed the debate on the second reading of the first new clause to embrace anything relevant to the other new clauses and schedules, on the understanding that, when the latter were reached, the second readings should be taken forthwith, and the committee should then proceed to any proposed amendments (*o*) (see also p. 519).

**Inadmissible new clauses.**—A new clause is out of order and will not be entertained :

- (1) If it is beyond the scope of the bill (*p*) ;
- (2) If it is inconsistent with clauses agreed to by the committee (*g*), or substantially the same as a clause previously negatived (*r*) ;
- (3) If it is in effect a redrafting of a clause which is already in the bill (*s*) ;
- (4) If it ought to be moved as an amendment to a clause of the bill (*t*) ;
- (5) If it needs an instruction (*u*).

A new clause proposed to the Army and Air Force (Annual) Bill, the intention of which was to abolish compulsory attendance at church parade, was ruled out of order, as it related to a matter of administration which should be dealt with in Committee of Supply and not on the committee stage of that bill (*a*).

#### SCHEDULES AND NEW SCHEDULES

Schedules to a bill are considered, as a rule, after the new clauses have been disposed of, though occasionally they have been considered before the new clauses (*b*). A schedule can be amended and is treated in the same manner as a clause. The final question on a schedule is, "That this schedule (as amended) be the (first) schedule to the bill."

When the schedules have been considered, new schedules are offered. If a schedule be disagreed to another cannot be offered to supply its place until the remaining schedules have been disposed of (*c*). A new schedule

(*o*) H. C. Deb. (1937) 325, c. 2038-40.

(*p*) Parl. Deb. (1907) 175, c. 985 (on consideration, as amended) ; H. C. Deb. (1916) 85, c. 2195, 2428 ; *ibid.* (1919) 114, c. 2074 (on consideration, as amended) ; *ibid.* (1919) 120, c. 392 ; *ibid.* (1925) 181, c. 2135 (on consideration, as amended).

(*q*) C. J. (1859) 103.

(*r*) Parl. Deb. (1865) 179, c. 538.

(*s*) H. C. Deb. (1916) 82, c. 1005.

(*t*) Parl. Deb. (1893) 15, c. 1433 (on consideration, as amended) ; *ibid.* (1896), 41, c. 1703 (on consideration, as amended) ; *ibid.* (1899) 74, c. 858 ; *ibid.* (1903) 125, c. 587 (on consideration, as amended).

(*u*) Parl. Deb. (1893) 16, c. 257 (on consideration, as amended).

(*a*) H. C. Deb. (1925) 182, c. 1421 ; *ibid.* (1932) 264, c. 595.

(*b*) C. J. (1844) 517, 536.

(*c*) C. J. (1844) 512.

is brought up, read the first time and second time, amended, if need be, and added to the bill (*d*).

#### CONSOLIDATION OF BILLS

When, pursuant to an instruction, two bills are to be consolidated, the preambles (if any) of the two bills are severally postponed, and the clauses of each are successively proceeded with (*e*).

The only modern instance of consolidation of two bills into one is that of the Road Traffic Bill [Lords] and Omnibuses Bill, 1930, which, in pursuance of an instruction from the House, were consolidated by a standing committee (*f*).

#### DIVISION OF BILLS

When an instruction has been given to the committee that a bill is to be divided into two or more bills, it is usual to postpone those clauses which are to form a separate bill, and, when they are afterwards considered, to annex to them a preamble (if necessary) enacting words and title (*g*). The separate bills are then separately reported.

#### PREAMBLE

When all the clauses and schedules have been agreed to, and any new clauses or schedules added, the preamble is considered, and amendments may be moved thereto (*h*), if rendered necessary by amendments made to the bill (*i*), and the chairman puts the question, "That this be the preamble of the bill."

On 11 April 1932, an amendment was offered to the preamble of the Army and Air Force (Annual) Bill to leave out the words "or stir up sedition." The chairman stated that the preamble was a recitation of the effect, not of the bill, but of the Army Act. As no amendment had been made to the section of the Army Act dealing with mutiny, etc., the proposed amendment to the preamble which could only be consequential on such an amendment having been made, was out of order (*k*).

Where the bill, as introduced, does not contain a preamble it is not competent for the committee to introduce one (*l*).

#### TITLE

The title can only be amended if the bill has been so altered as to necessitate such an amendment (*m*); but any amendment to the title that

(*d*) C. J. (1914-16) 71; *ibid.* (1917-18) 179.

(*e*) C. J. (1889) 297, 333, 339.

(*f*) C. J. (1929-30) 203; Proceedings of Standing Committee C, H. C. 132, pp. 3, 122-25 (1929-30).

(*g*) C. J. (1861-62) 376, 385; *ibid.* (1871) 114, 120.

(*h*) C. J. (1844) 48; Parl. Deb. (1844) 72, c. 1324; C. J. (1844) 154; *ibid.* (1845) 135; *ibid.* (1849) 505; *ibid.* (1900) 256; *ibid.* (1911) 190; H. C. Deb. (1911) 25, c. 446; C. J. (1920) 483.

(*i*) H. C. Deb. (1939-40) 363, c. 899.

(*k*) H. C. Deb. (1932) 264, c. 598.

(*l*) H. C. Deb. (1913) 55, c. 455; *ibid.* (1935) 300, c. 1359.

(*m*) H. C. Deb. (1930) 246, c. 996.

may be necessary is made (*n*). No question is put that the title, or that the title as amended, stand part of the bill (*o*).

#### REPORT OF PROGRESS

If the committee cannot go through the bill at one sitting the chairman, on the motion of a Member, puts the question, "That I do report progress and ask leave to sit again." If this motion is agreed to the chairman leaves the chair, and, when the House has resumed, reports to the Speaker that the committee have made progress in the bill, and that he was directed to move that the committee may have leave to sit again. The Member in charge, in response to the Speaker's invitation, thereupon names a day for the further consideration of the bill in committee.

Occasionally, on the chairman's report, the House has immediately resolved itself again into committee on the bill (*p*).

On 21 January 1913, when progress had been reported at the conclusion of the portion of a bill which had to be completed at seven o'clock under an order of the House, the House resolved that on the disposal of the report of a money resolution, which had to be agreed to before the next clauses of the bill could be considered, it would resolve itself again into the committee on the bill (*q*).

#### WHEN COMMITTEE MAKE NO REPORT

The proceedings of a committee on a bill may be brought abruptly to a close by an order, "That the chairman do now leave the chair" (*r*); or by a proof that a quorum is not present (see p. 313). The chairman in such cases, being without instructions from the committee, makes no report to the House. A bill disposed of in this manner disappears from the order book, though it can be revived by an order of the House (*s*) (see p. 365). When a committee on a bill is revived its proceedings are resumed at the point at which they were interrupted—having been valid, and duly recorded in the minutes, until the chairman was directed to leave the chair (*t*).

#### BILLS COMMITTED PRO FORMA

When the Member having charge of a bill desires to introduce numerous amendments in order to improve the measure and render it more generally acceptable to the House, he may move that the bill be committed *pro forma*. This course is rarely objected to, and the Speaker has overruled objections to his leaving the chair for this purpose during the time of unopposed business (*u*).

(*u*) C. J. (1854-55) 223; *ibid.* (1933-34) 150, 161; *ibid.* (1934-35) 208 (on recommendation).

(*o*) H. C. Deb. (1913) 55, c. 465.

(*p*) C. J. (1856) 316; *ibid.* (1911) 479. See also p. 304 for report of progress at the moment of interruption of business.

(*q*) C. J. (1912-13) 499.

(*r*) C. J. (1835) 497, 562; *ibid.* (1856) 201; *ibid.* (1857) 310; *ibid.* (1871) 339.

(*s*) Parl. Deb. (1864) 176, c. 99.

(*t*) Savings Banks and Friendly Societies Bill, C. J. (1860) 402, 427, 432; Mr. Speaker Denison's Diary, p. 165.

(*u*) Parl. Deb. (1882) 268, c. 116; *ibid.* (1895) 34, c. 1143.



The proceedings in committee are dependent on general agreement and are entirely formal. The proposed amendments are not separately considered, nor is any question put upon the several clauses of the bill. The chairman reports the bill, with the amendments, to the House; it is reprinted in its amended form and recommitted for a future day (*a*). When it has been recommitted the bill is considered in committee as if it had been committed for the first time.

Bills, originating in the Lords, may be committed *pro forma* in the House of Commons. It is not, however, regular when the consideration of a bill has been begun in the usual way to deal with the remaining clauses *pro forma*; but it has been arranged that all subsequent amendments, though put from the chair, shall be accepted without discussion (*b*).

In the case of the Board of Pensions Bill, 1916, although an amendment had been made to clause 1 and progress had been reported on a previous day, when the bill was again considered, government amendments, of which notice had been given, were made to the bill by general consent as in a *pro forma* committee, and the bill was reported to the House and recommitted forthwith. A Parliamentary paper had been circulated showing the effect of these amendments (*c*).

#### PROCEEDINGS OF COMMITTEE NOT KNOWN UNTIL REPORTED

The House is not supposed to be informed of the proceedings of the committee until the bill has been reported; and discussion of the clauses, with the Speaker in the chair, is consequently irregular.

#### PROCEEDINGS IN COMMITTEE ON A HYBRID BILL

The proceedings in a select committee on a hybrid bill are conducted in the same manner as in a committee on a private bill (see Chapter XXXIII). They differ from the proceedings in a select committee on a public bill (see p. 581), in that the committee have the same power over the bill as a committee on a private bill, and decide the question whether the preamble is proved, or, if there be no preamble, whether the general expediency of the bill is established before considering the clauses.

All opponents who have presented petitions within the time allowed by the order of the House are entitled to be heard, provided that they have a *locus standi* according to the rules and usage of Parliament. If the *locus standi* of a petitioner is objected to, it is decided by the committee, upon whom the decisions of the Court of Referees (see Chapter XXXII) are binding.

If an opponent fails to present a petition in due time he cannot be heard unless the order of the House is suspended in his favour by the House (*d*).

Witnesses before a committee on a hybrid bill are usually, though not always (*e*), examined on oath.

(*a*) C. J. (1900) 204; *ibid.* (1916) 231; H. C. Deb. (1916) 87, c. 711.

(*b*) C. J. (1856) 234; Parl. Deb. (1856) 142, c. 939.

(*c*) C. J. (1916) 238, 242; H. C. Deb. (1916) 88, c. 537.

(*d*) C. J. (1912-13) 238.

(*e*) See proceedings of the Select Committee on the Mercantile Marine (Memorial) Bill, H. C. 57, p. iv (1927).

If the preamble is proved, the committee go through the clauses of the bill, and report it with or without amendments (*f*).

If the committee are of opinion that the preamble of the bill is not proved, they report that fact to the House (*g*).

If the bill has no preamble and the committee consider that the general expediency of the bill has not been established, they report the bill to the House without amendment and make a special report explaining the circumstances of the case. A similar procedure is followed where the committee do not consider it expedient to proceed further with the bill (*h*).

If the committee wish to express their views upon the matters dealt with in the bill, they make a special report to the House.

Similarly, if a committee on a hybrid bill are informed that it is not intended to proceed with the bill, they report the fact to the House (*i*).

Fees are charged to opponents of a hybrid bill as if it were a private bill (*j*). Fees are also charged in like manner to promoters, except in the case of bills introduced by the Government, but these fees are only payable in respect of those proceedings which are of an analogous character to those on a private bill.

The minutes of the evidence taken before a committee on a hybrid bill are printed by the House for the use of the committee; and parties appearing before the committee are allowed, by leave of the Speaker, to receive copies, and in some instances they pay a share of the expense.

## REPORT OF BILL

### CLOSE OF COMMITTEE PROCEEDINGS AND REPORT OF BILL

When the bill has been fully considered, the chairman proposes the question, "That I do report the bill without amendment (or, as amended) to the House" (*k*). This question having been agreed to, he leaves the chair, under S.O. No. 51, without any further question being put and the Speaker resumes the chair. The chairman approaches the steps of the chair and, as directed by S.O. No. 38, reports the bill forthwith to the House.

(1) If the bill has not been amended the chairman states, "I beg to report that the committee have gone through the bill and directed me to report the same without amendment."

(2) If the bill has been amended the formula is, "I beg to report that the committee have gone through the bill and made amendments thereunto." If the title of the bill has been amended, it is laid down in S.O. No. 34 that such amendment must be specially reported (*l*).

(*f*) C. J. (1922) 169, 267; *ibid.* (1933-34) 145, 274

(*g*) C. J. (1890-91) 398.

(*h*) C. J. (1927) 321 (report from a joint committee).

(*i*) C. J. (1890-91) 398.

(*j*) See Table of Fees in Standing Orders (Private Business), in which a private bill within the meaning of the Table is defined.

(*k*) This is now regarded as a formal question and the Chairman has deprecated debate on it, H. C. Deb. (1934-5) 301, c. 1852, 1856.

(*l*) C. J. (1860) 343; *ibid.* (1865) 95; *ibid.* (1933-34) 150, 161; *ibid.* (1934-35) 208 (on recommittal). See also H. C. Deb. (1914) 64, c. 2117

If the citation clause of the bill has been amended, and it is thought necessary, in consequence, to change the short title by which the bill is known, the entry in the Votes and Proceedings and the Journal describes the bill as "... Bill (changed to ... Bill)". When the next stage is put down on the order paper the new title is put first, *e.g.* "... Bill (changed from ... Bill)," but in all subsequent proceedings the new title only is employed (*m*).

If the short title has been changed by an amendment made by the Lords, on its return to the Commons, the bill is described as "... Bill (changed to "... Bill")" (*n*).

#### PROCEEDINGS ON REPORT

(1) If the bill has not been amended, it is ordered to be read the third time forthwith, or a future day is appointed for the third reading. According to the usual practice of the House, a money bill introduced on resolution may not go through more than one stage on the same day; but a Consolidated Fund Bill is expressly exempted from this rule by S.O. No. 70, and the consideration and third reading of such a bill may be taken forthwith as soon as the bill has been reported from Committee of the whole House.

Exceptions to this rule were made by orders of the House in the case of the Abnormal Importations (Customs Duties) Bill, 1931 (*o*), and the Transitional Payments (Determination of Need) Bill, 1932 (*p*).

(2) If amendments have been made to the bill in committee the Member in charge, in response to the Speaker's request, names a day on which the bill, as amended, is to be taken into consideration. This is the normal practice, but in cases of urgency (see p. 560) the bill may be considered immediately after it has been reported. The rule with regard to money bills, and the exceptions thereto, have been observed above.

**Bills reported from standing committees.**—When a bill is reported from a standing committee, with or without amendment, no formal proceeding takes place upon the report, but the House is deemed to have ordered the bill to be considered on a day fixed by the Member in charge and an entry to that effect is made in the Votes and Proceedings.

Under the provisions of S.O. No. 50 a bill reported from a standing committee, whether amended or not, must pass the consideration stage.

**Bills reported from select or joint committees.**—A bill reported from a select or joint committee is always recommitted to a Committee of the whole House, and the House is deemed to have ordered the re-committal of the bill for the day fixed by the Member in charge, the requisite entry being made in the Votes and Proceedings (*q*).

Bills which have been considered by select committees have occasionally

(*m*) C. J. (1933-34) 254; *ibid.* (1933-34) 126, 174, 186 (bill reported from a standing committee).

(*n*) C. J. (1938-39) 353 and 374.

(*o*) C. J. (1931-32) 27, 30.

(*p*) C. J. (1931-32) 338, 339.

(*q*) C. J. (1923) 302.

been recommitted to the same committee, before being considered in a Committee of the whole House (r).

#### REPRINTING OF BILLS

A bill materially amended in committee is reprinted before the consideration stage by an order made when the bill is reported to the House. This order is formal only and is made as a book entry in the Votes and Proceedings. Occasionally, while a bill has been in progress, the amended clauses, so far as they have been agreed to (s), or certain specified clauses (t) have been ordered to be printed.

Formerly, amended clauses were sometimes printed by direction of the Speaker and circulated with the Votes (u), but an order of the House is now the normal practice.

A bill, or part of a bill, has been ordered to be printed so as to show the effect of the amendments to be proposed by the Government (a), or has been so presented as a command paper (b).

Standing committees are empowered by S.O. No. 47 (6) to print and circulate with the Votes any amended clauses of bills committed to them.

A bill may also be reprinted after it has been amended on the consideration stage (c).

#### CONSIDERATION OF BILL, AS AMENDED

The consideration of a bill, as amended, commonly called the report stage, is now a more formal repetition of the committee stage, with the rules of debate, which are proper when the Speaker is in the chair, applied. For example, a Member can only speak once to the same question, though, in the case of a bill reported from a standing committee, this rule, under the provisions of S.O. No. 46 (3), is relaxed in favour of the Member in charge of the bill or of the mover of any amendment or new clause in respect of that amendment or clause. Notice must be given of new clauses, and these and any amendments must be seconded. While amendments which were rejected in committee may be moved again, and attempts may be made by amendments to restore the original text of the bill, the power of selection of amendments, conferred upon the Speaker by S.O. No. 28, is a check upon excessive repetition of debates which have already taken place in committee; and this power is usually exercised more freely by the Speaker on consideration than in committee by the chairman.

The development of the consideration stage into its present form seems to have occurred within the last hundred years. Previously,

(r) C. J. (1861-62) 321, 327; *ibid.* (1867) 273; *ibid.* (1877) 280. See also p. 611.

(s) C. J. (1917-18) 130; *ibid.* (1934-35) 168, 169.

(t) C. J. (1914-15) 281; *ibid.* (1917-18) 152, 164, 174.

(u) Representation of the People Bill, 1867; Irish Church Bill, 1869; Irish Land Bill 1870; Land Law (Ireland) Bill, 1881; Land Purchase (Ireland) Bill, 1891, etc.

(a) C. J. (1909) 360, 370, 482; *ibid.* (1916) 239; *ibid.* (1917-18) 162, 237, 261.

(b) C. J. (1910) 301.

(c) C. J. (1934-35) 231; *ibid.* (1937-8) 354.

the amendments proposed in committee were brought up and, severally, inserted in the bill. New amendments were in order, and were even allowed on third reading, but they do not appear to have been numerous. They might, however, be wholly irrelevant to the subject matter of the bill (*d*), and it was not until 1888 that this laxity was finally prevented by S.O. No. 41, which prescribes that no amendment may be proposed upon the report stage, which could not have been proposed in committee without an instruction from the House.

#### ORDER FOR CONSIDERATION READ

Under S.O. No. 39, when the order of the day for the consideration of a bill, as amended in Committee of the whole House, has been read, the House proceeds to consider the same without question put, unless the Member in charge thereof desires to postpone its consideration, or a motion be made to recommit the bill (*e*) (see p. 540). By S.O. No. 50, the same practice is followed in the case of a bill, which has been considered in a standing committee. If no Member moves a new clause, whereof notice stands upon the notice paper, or an amendment to the bill, no question arises on this stage; and the Speaker calls upon the Member in charge of the bill, who names a day for the third reading, or moves "That the bill be now read the third time" (*f*).

#### ORDER IN WHICH BILL IS CONSIDERED

If, however, the House proceeds to consider the bill, as amended, the entire bill is open to consideration, new clauses and schedules may be added, and amendments made to the bill. The order in which the bill is proceeded with differs from the order in committee, and is as follows:

- (1) New clauses.
- (2) Amendments to the bill.
- (3) New schedules.
- (4) Amendments to the schedules of the bill.

#### NEW CLAUSES

**Notice of new clauses.**—Under the provisions of S.O. No. 37, no clause may be offered on the report stage of a bill, unless notice thereof has been given (but see p. 812).

On 21 July 1898 a notice of an amendment on the report stage of the Evidence in Criminal Cases Bill [Lords], standing in the name of the Attorney General, which was in effect a new clause (see p. 529), was accepted by the Speaker as notice of a new clause (*g*).

New clauses, notice of which had not been circulated but which were allowed by the Speaker to appear on the notice paper, when reprinted (see p. 250) for the information of Members, were not allowed to be moved (*h*).

(*d*) C. J. (1844) 63.

(*e*) Parl. Deb. (1883) 280, c. 1825.

(*f*) Parl. Deb. (1883) 282, c. 1095.

(*g*) C. J. (1898) 365; Supplement to the Votes, p. 2547.

(*h*) Parl. Deb. (1906) 163, c. 61. See also H. C. Deb. (1919) 120, c. 136.

It has been held that notice of a new clause must comprise the words of the clause intended to be proposed; and where a clause has been offered, differing materially from the notice, it has been withdrawn (*i*). This defect of a notice cannot be supplied by an amendment being proposed to the clause by another Member; as the clause cannot be amended until it has been received and read a second time (*j*).

A Member is not permitted to move a clause of which another Member has given notice (*k*), and a Member who is not in his place when called upon by the Speaker to move a new clause is not called again when the rest of the new clauses upon the notice paper have been disposed of (*l*).

**Proceedings on new clauses.**—New clauses are considered in the order in which they stand upon the paper, that is, the order in which they have been handed in, except that priority is given to clauses offered by the Member in charge of the bill.

On being called by the Speaker, the mover of the new clause brings it up, and may speak in support thereof; after it has been seconded, the clause is read the first time without question put. As in committee, the reading of the marginal note of the clause by the clerk is held to comply with the provisions of S.O. No. 37.

The question is then proposed from the chair, "That the clause be read a second time." This is the proper time for opposing the clause, and the proposer may again address the House in its favour (*m*).

If so desired, the motion for reading the clause a second time, and the clause itself, may, by leave of the House, be withdrawn (*n*).

On consideration of the Finance Bill, 1922, it appeared from the debate that a new clause was unnecessary, whereupon the Speaker declined to put the question for its second reading to the House (*o*).

An amendment proposed to a new clause, after it had been read a second time, and the new clause itself, have been, by leave of the House, withdrawn (*p*).

When the clause has been read a second time amendments may be made thereto, but a motion to postpone the clause is not permitted (*q*). The last question proposed by the Speaker is, that the clause, or the clause as amended, be added to the bill, and on this question a further debate may arise.

#### AMENDMENTS TO BILL

When the new clauses on the notice paper have been disposed of the Speaker calls on the Members who have given notice of amendments to the bill. Unlike notice of a new clause, notice of an amendment is not obligatory, and, if called by the Speaker, a Member may propose

(*i*) C. J. (1854) 336; Parl. Deb. (1854) 134, c. 694; C. J. (1857-58) 284; Parl. Deb. (1858) 151, c. 1036.

(*j*) Parl. Deb. (1854) 134, c. 694.

(*k*) Parl. Deb. (1876) 231, c. 662; *ibid.* (1883) 282, c. 1995; H. C. Deb. (1916) 85, c. 1962.

(*l*) Private ruling, 13 July 1903.

(*m*) Parl. Deb. (1863) 171, c. 189.

(*n*) C. J. (1857) 332, 393; *ibid.* (1934-35) 267.

(*o*) C. J. (1922) 264.

(*p*) C. J. (1870) 400.

(*q*) Parl. Deb. (1901) 95, c. 1549.

an amendment, of which he has not previously given notice ; but the desirability of giving notice of important amendments is even greater on report than in committee. Amendments are offered, as in committee, in the order in which, if agreed to, they will stand in the amended bill ; but if a proposed amendment be withdrawn an amendment at a prior place in the bill may be moved (*r*), provided that it does not extend beyond the last word upon which the House has already given a decision.

Amendments are moved to the bill, not to a particular clause, and amendments to leave out a clause, series of clauses or the preamble, are moved as amendments to the bill ; and no question is put for each clause standing part of the bill. An amendment to postpone a clause is out of order on report (*s*).

According to the older practice of the House, when an amendment was proposed to leave out the preamble or a clause, the question was put, that the preamble (*t*), or clause (*u*), stand part of the bill ; but now, if such an amendment is moved, the question is that the words proposed to be left out stand part of the bill (*a*).

During a debate on an amendment to leave out the preamble, the Speaker has ruled that the whole bill was not before the House, and that to bring the whole bill under consideration would be a violation of S.O. No. 39. The preamble should, therefore, be considered as a clause, and the discussion thereon should be as much confined to it as if a clause were under consideration (*b*).

#### NEW SCHEDULES AND SCHEDULES

After the amendments to the clauses of the bill have been considered new schedules may be proposed and amended in the same way as new clauses (*c*). Amendments may then be made to the schedules of the bill as reported by the committee (*d*).

#### - AMENDMENT OF TITLE

When all the new clauses, amendments, new schedules, and schedules have been disposed of, the title of the bill is, if necessary, amended (*e*).

#### INADMISSIBLE AMENDMENTS

The moving of amendments to a bill on the consideration stage is governed by S.O. No. 41, which prohibits the proposal of any amendment which could not have been moved in committee without an instruction from the House (*f*). Consequently the rules of order respecting the admissibility of amendments in committee, which are set out on

(*r*) Parl. Deb. (1872) 213, c. 672-73.

(*s*) Parl. Deb. (1905) 150, c. 375.

(*t*) C. J. (1893-94) 504.

(*u*) C. J. (1857-58) 285, 339.

(*a*) C. J. (1933-34) 181, 183.

(*b*) Parl. Deb. (1893) 16, c. 293 ; *ibid.* (1907) 180, c. 1428.

(*c*) C. J. (1867) 365 ; *ibid.* (1872) 339 ; *ibid.* (1875) 204 ; *ibid.* (1895) 297 ; *ibid.* (1917-18) 188 ; *ibid.* (1924) 263, 339.

(*d*) C. J. (1867) 365 ; *ibid.* (1924) 263.

(*e*) C. J. (1900) 253.

(*f*) H. C. Deb. (1928) 216, c. 142. See also H. C. Deb. (1924) 175, c. 1726-28.

pp. 517-30 above, are generally applicable to amendments moved on consideration, and many of the instances quoted there refer to the later stage. Thus an amendment is out of order,

- (1) if it is inconsistent with the provisions of the bill which have already been considered by the House (*g*);
- (2) if its effect would be to negative the bill (*h*); or,
- (3) if it proposes to leave out the only effective clause of the bill (*i*).

Where it appeared from the debate on an amendment that it was inconsistent with an earlier provision of the bill, the Speaker informed the House that the question on the amendment could not be put (*k*).

**Charges upon the people.**—A further important restriction upon amendments on consideration prohibits the moving of any clause or amendment which imposes a tax or charge upon the public revenue or upon local rates, or which increases any charge beyond what was agreed to in committee (*l*) even if covered by a money resolution (see S.Os. Nos. 63 and 64, and Chapter XXIV). When a debate on an amendment has shown that it would impose such a charge it has been ruled out of order (*m*).

If it is desired to propose an amendment of this nature the bill must be recommitted. In respect of a charge on rates, a bill may be recommitted and considered in committee forthwith (*n*). If, however, it is recommitted in respect of a charge upon the public revenue, it cannot be considered in committee unless a resolution sanctioning the proposal has been recommended by the Crown, passed in Committee of the whole House, and agreed to by the House on report (*o*).

#### IRREGULARITIES IN COMMITTEE NOTICED ON REPORT

Notice may be taken on report of irregularities which have occurred in committee, and in such cases the bill is usually recommitted.

Notice was taken on consideration of the Common Law Procedure (Ireland) Act (1853) Amendment Bill, 1864, that two clauses had been introduced by the committee which were not relevant to the subject matter of the bill. The bill was recommitted in respect of the two clauses, and they were struck out by the committee (*p*).

On consideration of the Road Traffic Bill [Lords], 1930, the Speaker called the attention of the House to the fact that the standing committee, by inadvertence, during the consideration of a new clause, agreed to an amendment

(*g*) Parl. Deb. (1881) 258, c. 1597, 1628; *ibid.* (1883) 282, c. 1198, *ibid.* (1889) 338, c. 1155; *ibid.* (1891) 354, c. 184-89.

(*h*) H. C. Deb. (1917) 91, c. 955; *ibid.* (1919) 114, c. 1628; *ibid.* (1919) 118, c. 1770; *ibid.* (1920) 130, c. 1661.

(*i*) H. C. Deb. (1911) 27, c. 710; *ibid.* (1912) 39, c. 2049; *ibid.* (1920) 126, c. 2553; *ibid.* (1920) 130, c. 777.

(*k*) C. J. (1923) 267; H. C. Deb. (1923) 166, c. 1301-05; C. J. (1937-38) 356; H. C. Deb. (1938) 338, c. 1271.

(*l*) H. C. Deb. (1932) 266, c. 1490-96; *ibid.* (1938-39) 349, c. 2278; *ibid.* (1939-40) 357, c. 1660-1.

(*m*) C. J. (1923) 231; H. C. Deb. (1923) 165, c. 2039; C. J. (1931-32) 222; H. C. Deb. (1932) 266, c. 1490-94.

(*n*) C. J. (1868-69) 296; *ibid.* (1931-32) 229.

(*o*) C. J. (1837-38) 605. See also the case of the Road Traffic Bill [Lords], 1930, referred to below.

(*p*) C. J. (1864) 172.



authorizing the payment of certain fines into the Exchequer for which they had no authority under a resolution of a Committee of the whole House. The bill was recommitted to the standing committee in respect of the clause, but a money resolution having been passed to cover the provisions of the clause, the standing committee reported the clause without amendment (*q*).

#### DISCONTINUANCE OF INGROSSMENT

In 1849 the ancient system of ingrossing bills upon parchment was discontinued (*r*), and in consequence the old form of question, "That this bill be ingrossed," upon the report stage, was dispensed with.

#### CONCLUSION OF CONSIDERATION STAGE

When all the amendments to the bill have been disposed of the Speaker calls upon the Member in charge, who moves "That the bill be now read the third time," or names a future day for the third reading. (See p. 534 above for the rule with regard to Money bills.)

#### RECOMMITTAL OF BILL

A bill may be recommitted, if desired, to a Committee of the whole House, a standing committee or a select committee, and a motion for this purpose may be made at the beginning or end of the consideration stage, between the consideration and third reading, or on the third reading. No such motion may be made during the proceedings on consideration.

For the recommitment of a bill reported from a select committee see p. 534.

The motion for recommitment may be in respect of the whole bill or in respect of certain clauses or amendments only. The provisions of S.O. No. 40 (see below) apply only when a motion to recommit the whole bill is made at the beginning of the consideration stage; in other cases the debate on the motion is restricted to the purpose and extent of the proposed recommitment of the bill (*s*). If the Member in charge of the bill, and other Members also, desire the recommitment of the bill the former has priority in moving the motion for that purpose (*t*).

A motion by an unofficial Member to recommit a government bill at the conclusion of the consideration stage has been refused by the Speaker (*u*).

If the bill is recommitted without limitation, the entire bill is again considered in committee and reported with "other" or "further" amendments. Sometimes, also, a bill is recommitted with an instruction to the committee that they have power to make some particular or additional provision (*a*).

(*q*) C. J. (1829-30) 387, 399, 411.

(*r*) L. J. (1849) 16, 25; C. J. (1849) 51, 578, 620.

(*s*) Parl. Deb. (1872) 212, c. 1278; *ibid.* (1899) 72, c. 1079, *ibid.* (1906) 161, c. 757; *ibid.* (1907) 175, c. 969; *ibid.* (1907) 179, c. 296, 502; H. C. Deb. (1909) 6, c. 662; *ibid.* (1911) 28, c. 1907; *ibid.* (1924) 176, c. 1562 and 1598

(*t*) Parl. Deb. (1865) 179, c. 800.

(*u*) H. C. Deb. (1920) 132, c. 1359.

(*a*) C. J. (1837-38) 605; *ibid.* (1839) 318; *ibid.* (1921) 259.

Bills which have been considered by a Committee of the whole House have occasionally been recommitted to a select committee (*b*). In 1928, and again in 1930, a motion was made to recommit a bill, which had been reported from a standing committee, to a select committee, but was negatived (*c*).

## PROCEDURE UNDER S.O. NO. 40

When the order of the day for the consideration of a bill, as amended, is read, a motion may be made to recommit the bill.

If the motion to recommit the bill is opposed the Speaker is directed by S.O. No. 40 to permit a brief explanatory statement of the reasons for recommitment from the Member who moves and from a Member who opposes the motion, after which he must put the question without further debate (*d*). The inclusion of any matter, other than recommitment, in the motion (*e*), or the limitation of the motion to a partial recommitment of the bill, removes the motion from the scope of the standing order and the restriction on the number of speakers is not enforced.

S.O. No. 40, which was passed in 1919, was devised to prevent a motion for recommitment being used for purposes of obstruction (*f*). Consequently, while a motion to recommit the whole bill may under certain circumstances be regarded as obstructive, a motion for partial recommitment is normally made with the definite object of improving or adding to the bill, and is often necessary in order to insert amendments, relating to charges on the people, which cannot be made on consideration. If S.O. No. 40 were applied to a motion for the recommitment of a bill in respect of specified clauses or amendments, the arbitrary and in many cases inconvenient result would follow that it would be impossible to extend the terms of such a motion, once it had been moved, by the addition of further clauses and amendments (*g*).

## PARTIAL RECOMMITTAL

A bill may be recommitted in respect of a clause or clauses or schedules in the bill (*h*), or in respect of new clauses, schedules, or amendments which are to be proposed to the bill (*i*).

Only so much of the bill as is specified in the order for recommitment is considered in the committee (*k*). If a bill is recommitted in respect of specified amendments to a clause, only those amendments and amendments relevant to them may be moved, and not other amend-

(*b*) C. J. (1809) 370; *ibid.* (1810) 184.

(*c*) C. J. (1928) 256; *ibid.* (1929-30) 336.

(*d*) C. J. (1919) 198, 378; *ibid.* (1922) 241; *ibid.* (1923) 197

(*e*) H. C. Deb. (1920) 135, c. 331.

(*f*) See evidence given before Select Committee House of Commons (Procedure), 1914, H. C. 378 (1914), Questions 2410, 2621-26, 2951.

(*g*) C. J. (1931-32) 229.

(*h*) C. J. (1918) 122; *ibid.* (1919) 161, *ibid.* (1933-34) 167.

(*i*) C. J. (1920) 446; *ibid.* (1921) 259; *ibid.* (1924) 334, *ibid.* (1934-35) 207, 228, 271, 320.

(*k*) Parl. Deb. (1865) 179, c. 826.

ments (*l*). When the amendments have been disposed of the question for the clause standing part of the bill has to be put (*m*).

#### FURTHER RECOMMITTAL

A bill may be recommitted as often as the House thinks fit. Bills have been recommitted twice (*n*), and even four and five times (*o*).

#### RECOMMITTAL BEFORE, OR ON THIRD READING

Two subsequent stages afford an opportunity for the recommitment of a bill, though in modern times they have been used infrequently. When the House has ordered a bill to be read the third time the order may be discharged and the bill recommitted (*p*). Again, when the question for the third reading of the bill has been proposed an amendment may be moved to recommit the bill (*q*). This latter practice, however, is open to objection, since, under the provisions of S.O. No. 33, which was passed in 1919, if an amendment to the question for third reading is defeated, the Speaker must forthwith declare the bill to be read the third time. Consequently after the defeat of an amendment for the recommitment of a bill moved to the question for its third reading, debate on the third reading itself would, under the terms of S.O. No. 33, be excluded. If, therefore, it should be desired to recommit a bill, after it has been ordered to be read the third time, it would appear preferable to move to discharge this order and recommit the bill. By this means the recommitment is disposed of before the question for the third reading of the bill is proposed.

The proceedings in relation to the third reading of the Food and Drugs Bill [Lords], 1938, were declared null and void, and the bill was recommitted to a committee of the whole House in respect of a particular clause (*r*).

#### REPORT OF RECOMMITTED BILL

The proceedings on the report of a recommitted bill are similar to those already explained : and on report the bill, as amended, is taken into consideration forthwith (*s*) and is read the third time, 'or further proceedings thereon are appointed for a future day.

#### THIRD READING

On the reading of the Order for third reading the King's consent is

(*l*) H. C. Deb. (1917) 100, c. 273, 280, 285, 677, etc.

(*m*) C. J. (1917-18) 271; *ibid.* (1918) 216; *ibid.* (1920) 441.

(*n*) C. J. (1828) 354; *ibid.* (1834) 286; *ibid.* (1914-16) 327, 330.

(*o*) C. J. (1810) 384, 396, 420; *ibid.* (1813-14) 420, 444, 460.

(*p*) C. J. (1854-55) 117; *ibid.* (1857) 318, 339, 384.

(*q*) C. J. (1863) 167, 261, 275; *ibid.* (1914-16) 210; *ibid.* (1917-18) 267, 269; *ibid.* (1922) 255.

(*r*) C. J. (1937-8) 360.

(*s*) For admissibility of amendments on report after partial recommitment see Private Ruling of 9 July 1900 (Decision 1347) and Private Ruling 2 November 1943.

signified to bills affecting the Crown's interests or prerogative if it has not already been given (see p. 783).

#### BILLS READ THE THIRD TIME FORTHWITH

It has already been explained that, when a bill is reported without amendment (*t*), or when the consideration of a bill, as amended, is concluded (*u*), the Member in charge may move the third reading of the bill forthwith, or name a future day for that stage.

According to present practice in the House of Commons, the former course is frequently followed, and may, in fact, be regarded as the usual procedure, except where the bill is one of great importance or has been extensively amended on consideration; in such cases an interval before the third reading may be thought desirable (*a*). The rule with regard to Money Bills, and the exceptions thereto, have been observed above on p. 534. The passing of bills with unusual expedition, through all or several stages in one day, is described on p. 560.

#### DEBATE ON THIRD READING

The procedure on the third reading of a bill is similar to that described in relation to the second reading, but the debate is more restricted at the later stage and is limited to the matters contained in the bill (*b*). If the question "That the bill be now read the third time" is negatived, such a vote is not necessarily fatal to the further progress of the bill (*c*). The more usual method of objection is therefore to move an amendment, putting off the third reading for three (six) months, or a "reasoned" amendment against the bill being now read the third time. The carrying of the former amendment is tantamount to the rejection of the bill, while, in the event of a "reasoned" amendment being accepted, it is unlikely that any further progress would be made with the bill (see p. 498 above).

As the debate on the third reading should be confined to the contents of the bill, reasoned amendments which raise matters not included in the provisions of the bill are not permissible (*d*).

#### AMENDMENTS ON THIRD READING

By S.O. No. 42, verbal amendments only can now be made to a bill on the third reading (*e*). If material amendments are desired the order for the third reading of the bill should be discharged, and the bill recommitted to allow the introduction of the amendments in committee. In such cases it has been customary to consider the bill as amended on recommitment, and to read it the third time immediately (*f*).

(*t*) C. J. (1892) 148; *ibid.* (1933-34) 31.

(*u*) C. J. (1892) 83, 98, 294; *ibid.* (1906) 501; *ibid.* (1933-34) 99.

(*a*) C. J. (1933-34) 195, 197; *ibid.* (1934-35) 231, 236, 237.

(*b*) H. C. Deb. (1918) 108, c. 974, 976; *ibid.* (1920) 127, c. 347, 1982; *ibid.* (1924) 169,

c. 1594.

(*c*) Compensation of Workmen Bill, C. J. (1852-53) 410, 417, 536.

(*d*) H. C. Deb. (1935-36) 314, c. 718.

(*e*) C. J. (1905) 401.

(*f*) C. J. (1857) 384; *ibid.* (1860) 174; *ibid.* (1899) 309, 381; *ibid.* (1922) 255.

**Amendment of title.**—In addition to the opportunities offered by the committee (see p. 530) and report (see p. 538) stages, amendments may be offered to the title on the third reading stage also (*g*).

#### BILL PASSED

The question "That this bill do pass" is no longer put in the House of Commons (*h*), and, according to established usage, a bill, when read the third time, has passed. The form, however, is preserved in the Votes and Proceedings and Journal, where the bill is recorded as having been read the third time and passed, and, in addition, in the case of bills brought from the Lords, with or without amendment. An entry is occasionally made in the Journal, at the discretion of the House, that a bill was read the third time and passed, *nemine contradicente* (*i*).

Formerly, after a bill had been read the third time, the question "That this bill do pass" was debated and divided on (*k*), and sometimes negatived (*l*).

#### BILL NOT TO BE ALTERED OTHERWISE THAN BY AMENDMENT

Throughout all these stages and proceedings the bill itself continues in the custody of the Clerk or the Public Bill Office, and no alteration whatever is permitted to be made in it, without the express authority of the House or a committee, in the form of an amendment regularly put from the chair, and recorded by the clerks at the table or by the chairman in committee.

A debate took place on 3 June 1782 as to alterations which were alleged to have been made without authority by Mr. Burke, paymaster of the forces, in the ingrossment of a bill for regulating the pay office (*m*).

In practice, however, any alterations in a bill which are necessitated by the renumbering of clauses or by a change in the date of the citation title are made by the Public Bill Office before the bill is reprinted at any stage.

In 1932 the first schedule to the Import Duties Bill, which had been extensively amended in committee, was reprinted on the chairman's instructions in the most convenient form (*n*).

#### COMMUNICATION BETWEEN THE TWO HOUSES

**From Lords to Commons.**—The next step is to communicate the bill to the other House. The Lords ordinarily send their bills to the Commons by the Clerk of the Parliaments, or by a clerk deputed for the purpose. When the bill has originated in the Lords a message is

(*g*) C. J. (1862) 378; *ibid.* (1888) 325, 441; *ibid.* (1916) 234.

(*h*) Parl. Deb. (1881) 258, c. 1832; *ibid.* (1884) 289, c. 1583.

(*i*) C. J. (1688-93) 280; *ibid.* (1857) 110, Mr. Speaker's Retirement Bill, on which occasion the Speaker expressed his acknowledgments to the House. See also debate and motion regarding this entry in the case of the Representation of the People Bill, C. J. (1884) 321, 324; Parl. Deb. (1884) 289, c. 1560, etc.

(*k*) C. J. (1830-31) 860; *ibid.* (1851) 335; *ibid.* (1852-53) 692, *ibid.* (1854-55) 372; *ibid.* (1862) 382.

(*l*) C. J. (1821-22) 413; *ibid.* (1825) 617; *ibid.* (1834) 497; *ibid.* (1864) 388.

(*m*) 23 Parl. Hist. 989; 3 Wrexall's Mem. 431.

(*n*) H. C. Deb. (1932) 262, c. 521.

ordered to be sent to the House of Commons "to carry down the said bill, and desire their concurrence thereto." If the bill has been sent up by the Commons, and has been agreed to without amendment, the Lords send a message "to acquaint them that the Lords have agreed to the said bill without any amendment," but do not return the bill unless it is a bill for granting aids or supplies (see p. 558). If they have made amendments, they return the bill to the Commons with a message, "that the Lords have agreed to the same with amendments, to which their Lordships desire their concurrence."

**From Commons to Lords.**—The Commons send up their bills to the House of Lords by their Clerk, or by one of the clerks deputed for the purpose. The form of message adopted by the Commons in sending bills to the upper House is similar, *mutatis mutandis*, to that used by the House of Lords (see also p. 792).

**Bills sent by mistake.**—If a bill is carried to the other House by mistake, or if any other error is discovered, a message is sent to have the bill returned, or the error otherwise rectified by the proper officer (*o*). In 1844 an amendment made by the Lords, in the Merchant Seamen's Bill, was omitted from the paper of amendments returned with the bill to the Commons. After all the amendments received by the Commons had been agreed to they were informed by the Lords that an amendment had been omitted, by mistake, and that their concurrence was desired; but, at the instance of the Speaker, the Commons declined to take the amendment into consideration, and the Lords did not insist upon it (*p*).

## CONSIDERATION OF LORDS' AMENDMENTS

The following sections describe the further proceedings on a bill, which has originated in the House of Commons and is returned with amendments from the House of Lords.

In the case of a bill which has originated in the Lords and is returned amended by the Commons, the roles of the two Houses will, of course, be reversed, Lords' Amendments will be Commons' Amendments, and Lords' Reasons will be Commons' Reasons.

### TIME FOR CONSIDERING LORDS' AMENDMENTS

By S.O. No. 43, Lords' Amendments to public bills are appointed to be considered on a future day, unless the House shall order that the amendments be considered forthwith (*q*), though, if objection be taken to the latter course, the consideration of the amendments may be deferred. According to modern practice, a Lords' message is ordinarily received without communication being made to the House, and the message

(*o*) C. J. (1547-1628) 132 (1580); *ibid.* (1819-20) 446; *ibid.* (1823) 317; *ibid.* (1825) 512; *ibid.* (1836) 639, 646; *ibid.* (1837) 572, 609; *ibid.* (1845) 804; *ibid.* (1846) 1277; *ibid.* (1847-48) 736; *ibid.* (1857) 420; *ibid.* (1859) 241; *ibid.* (1864) 370, 374; *ibid.* (1936-37) 152.

(*q*) C. J. (1844) 637, 638, 644; Parl. Deb. (1844) 76, c. 1994.

(*p*) C. J. (1854-55) 458, 464, Parl. Deb. (1854) 135, c. 1411; *ibid.* (1875) 225, c. 650; C. J. (1942-43) 97.

and the order appointing a day for the consideration of the amendments is entered in the Votes and Proceedings, the Member in charge of the bill informing the clerks at the table of the day which he wishes to select. Usually, also, the amendments are ordered to be printed at the same time, and occasionally the bill, as amended by the Lords, has been ordered to be printed (*r*).

The consideration *forthwith* of Lords' Amendments now means not only their consideration following the communication of the message containing them to the House, but also their consideration *without a previous order of the House*, whether on the day on which the message is received (*s*) or on a subsequent day (*t*). A motion that the Lords' Amendments be considered forthwith is moved by the Member in charge of the bill, after notifying the Speaker, either before the commencement or at the end of the orders of the day.

As this practice involves the consideration of the amendments without notice and without their having been printed, it is generally reserved for amendments which are not material.

Even, however, in the case of amendments which are material, provided there is any need for urgency owing to the state of business, the Lords' message may be communicated to the House, and the motion for considering the Lords' Amendments forthwith may be made between any two orders of the day (*u*), or by interrupting the business under discussion (*a*).

#### PROCEEDINGS ON CONSIDERATION OF LORDS' AMENDMENTS

When the consideration of Lords' Amendments is put down as an order of the day the question is proposed, "That the Lords' Amendments be now considered"; when the amendments are to be considered forthwith the question is, "That the Lords' Amendments be considered forthwith." On either question it is not permissible to discuss the provisions of the bill (*b*).

An amendment may be moved to leave out "now" and add "upon this day three months" (*c*), or to leave out "now considered" and add "laid aside" (*d*) or the order for the consideration of the Lords' amendments may be discharged and the bill withdrawn (*e*): but generally the House proceeds to the consideration of the amendments.

The amendments are read by the Clerk one by one, this proceeding being technically the second reading; and unless it is proposed to divide, postpone or amend the amendment, a motion is made, "That

(*r*) C. J. (1856) 312, 324; *ibid.* (1876) 365.

(*s*) C. J. (1933-34) 46, 47, 241, 243; *ibid.* (1934-35) 40, 43.

(*t*) C. J. (1931-32) 276, 283; *ibid.* (1933-34) 199, 200.

(*u*) C. J. (1890-91) 340; *ibid.* (1906) 505; *ibid.* (1917-18) 76, *ibid.* (1919) 316, H. C. Deb. (1919) 119, c. 1861; C. J. (1920) 382; *ibid.* (1921) 362.

(*a*) C. J. (1914-16) 31; H. C. Deb. (1914) 68, c. 1595; C. J. (1919) 315; H. C. Deb. (1919) 119, c. 1822-23; C. J. (1933-34) 259; *ibid.* (1938-9) 383.

(*b*) Parl. Deb. (1894) 28, c. 1489; *ibid.* (1900) 87, c. 825; H. C. Deb. (1915) 74 c. 2059 *et seq.*

(*c*) C. J. (1857-58) 349; *ibid.* (1921) 362

(*d*) C. J. (1854-55) 417.

(*e*) C. J. (1856) 380 and 386.

this House doth agree (or disagree) with the Lords in the said amendment." The debate on this motion must be confined to the amendment under consideration, and may not extend to other amendments (*f*) or to the general merits of the bill (*g*). No reply or second speech is permitted on the motion (*h*). An amendment to insert the word "not" in the question is inadmissible (*i*). Motions both for agreeing and disagreeing with Lords' Amendments have been negatived (*k*); but if the question for disagreeing with an amendment is negatived the amendment is thereby agreed to (*l*). An amendment cannot be proposed to a Lords' Amendment after the question for agreeing or disagreeing thereto has been proposed from the chair (*m*).

On two occasions the question for agreeing or disagreeing with Lords' Amendments has been put by order of the House with respect to the amendments as a whole (*n*).

Notice has been given of the motions proposed to be made on consideration of Lords' Amendments and of amendments proposed to be moved thereto (*o*).

**Postponement of Lords' Amendments.**—A Lords' Amendment may be read and postponed and subsequent amendments may be taken into consideration (*p*), but a motion for the postponement of an amendment cannot be made after the question for agreeing or disagreeing with it has been proposed (*q*).

Amendments have also been postponed before they have been read a second time (*r*).

The Lords' reason for disagreeing to a Commons' Amendment (see p. 550 below) has been read and further consideration thereof has been postponed (*s*), or the consideration of the reason has been postponed without its being read (*t*).

**Lords' Amendments agreed to.**—If the Lords' Amendments are agreed to by the Commons a message is sent acquainting the Lords accordingly, and the bill is returned to await the Royal Assent.

#### STAGES IN PROCESS OF SECURING AGREEMENT BETWEEN THE TWO HOUSES

It is now necessary to describe the stages which may arise when amendments made to a bill by the Lords are disagreed to by the Commons, or where amendments are made by the Commons to a Lords' Amendment.

(*f*) Parl. Deb. (1907) 182, c. 269; H. C. Deb. (1912) 45, c. 713

(*g*) Parl. Deb. (1878) 241, c. 846, 1059; *ibid.* (1906) 167, c. 1879, *ibid.* (1907) 181, c. 1201; H. C. Deb. (1911) 29, c. 1104; *ibid.* (1913) 49, c. 43.

(*h*) Parl. Deb. (1869) 197, c. 1949.

(*i*) Parl. Deb. (1876) 231, c. 1176.

(*k*) C. J. (1908) 511; *ibid.* (1914-16) 88; *ibid.* (1916) 259; *ibid.* (1919) 318, *ibid.* (1921) 351; *ibid.* (1937-38).

(*l*) C. J. (1908) 511; *ibid.* (1916) 260; H. C. Deb. (1918) 101, c. 2171

(*m*) Parl. Deb. (1907) 181, c. 312; H. C. Deb. (1918) 101, c. 2171.

(*n*) C. J. (1906) 491, 494; *ibid.* (1909) 529; H. C. Deb. (1909) 12, c. 2179

(*o*) Notices of Motions, session 1908, pp. 5876, 5944, 6022; session 1935-36, pp. 2903, 2904.

(*p*) C. J. (1835) 624; *ibid.* (1887) 456.

(*q*) H. C. Deb. (1919) 119, c. 1869. See also Parl. Deb. (1891) 351, c. 1470.

(*r*) C. J. (1917-18) 303, 305.

(*s*) C. J. (1917-18) 315.

(*t*) C. J. (1887) 456.



Further exchanges take place between the two Houses until every amendment made by one House is agreed to by the other, when the bill is ready for the Royal Assent, or until one House insists upon its disagreement to an amendment made by the other House, in which case the bill is lost for the session. In theory the process of securing agreement between the two Houses may be carried on indefinitely, but it is proposed here to review the successive stages and their complications only up to a point, beyond which it would normally be impossible to proceed.

**Relevancy of amendments to Lords' Amendments, and of consequential amendments to the bill.**—Before describing the proceedings in the Commons, when that House desires to disagree to amendments which have been made by the Lords, or to make further amendments thereto, the general rules of practice with regard to such amendments must be noticed.

(1) An amendment made to a Lords' Amendment should be relevant to the same subject-matter. If an amendment be proposed to a Lords' Amendment, not consequent on, or relevant to, such amendment, the question will not be put from the chair (*u*).

A departure from this rule was permitted, under peculiar circumstances, in the case of the Bolton Police Bill, 1839; but the Lords agreed to it with a special entry in the Journal, that it was not to be drawn into a precedent; and a protest was signed by five influential peers against agreeing to the amendment (*a*).

(2) No objection can be taken to a Lords' Amendment on the ground of order (*b*).

In the case of the Evidence in Criminal Cases Bill [Lords], 1898, the Speaker stated that it was his duty to put the question upon the motion for agreeing with one of the Lords' Amendments to the Commons' Amendments to the bill, in spite of the fact that the Lords' Amendment, though relevant to the bill, was not consequential on the Commons' Amendment. He left it to the House to agree to the amendment, or to disagree, on the ground of inconsequence or any other ground (*c*).

(3) According to a long-established rule, the Commons, when considering Lords' Amendments, may not leave out or otherwise amend anything which they have already passed themselves, unless such amendment be immediately consequent upon the acceptance or rejection of an amendment made by the Lords.

In 1678 it was stated by the Commons "that it is contrary to the constant method and proceedings in Parliament to strike out anything in a bill which hath been fully agreed and passed by both Houses" (*d*); and in allowing consequential amendments either in the body of the bill or in the amendments, the spirit of this rule is still maintained (*e*). Indeed, so binding has it been held that in 1850, when a serious oversight as to the commencement of the

(*u*) C. J. (1860) 494.

(*a*) L. J. (1839) 643.

(*b*) Parl. Deb. (1902) 116, c. 1403, H C Deb. (1916) 81, c. 2690, *ibid.* (1916) 85, c. 2695; *ibid.* (1919) 119, c. 2105; *ibid.* (1921) 146, c. 1057.

(*c*) Parl. Deb. (1898) 64, c. 241.

(*d*) C. J. (1667-87) 547 (1678); *cf.* C. J. (1547-1628) 388 (1607).

(*e*) C. J. (1836) 592; *ibid.* (1837-38) 829, *ibid.* (1854) 443; Parl. Deb (1854) 135, c. 828; C. J. (1876) 268, 422.

Act was discovered in the Pirates' Head Money Repeal Bill, before the Lords' Amendments had been agreed to, no attempt was made to correct it by way of amendment, but a separate Act was passed for the purpose (*f*).

In the case of the Representation of the People Bill, 1918, when it appeared from the debate that a consequential amendment proposed to the bill was contrary to the decision to which the House had come in accepting a Lords' Amendment, the Speaker stated that the question on the consequential amendment could not be put (*g*).

The Commons disagreed to a clause inserted by the Lords in the Poor Law Boards (Payment of Debts) Bill, 1859, on the ground of privilege, but inadvertently agreed to a subsequent amendment, which was consequent on that clause. The Lords did not insist upon their clause, and corrected the latter part of the bill by a consequential amendment to which the Commons agreed (*h*).

In 1920 the Lords left out a clause in the Derwent Valley Water Board Bill but had not left out the passages of the preamble referring to it. The Commons agreed to the Lords' Amendment and made the amendment necessary to bring the preamble into conformity with the bill as a consequential amendment (*i*).

**Lords' Amendments disagreed to, or amended by the Commons.**—Several alternatives are open to the Commons, when that House desires to disagree to amendments which have been made by the Lords.

(1) They may simply disagree with the amendment, either by agreeing to the question "That this House doth disagree with the Lords in the said amendment," or by negating the question, "That this House doth agree with the Lords in the said amendment."

(2) They may amend the Lords' Amendment—

(a) by leaving out words in the amendment (*j*);

(b) by leaving out words of the amendment and inserting or adding words instead thereof (*k*);

(c) by inserting words in (*l*) or adding words to the amendment (*m*).

(3) While agreeing to the amendment, they may make a consequential amendment to the bill (*n*); or, where the Lords' Amendment proposes to leave out words of the bill, an amendment may be made to the bill instead of the words left out (*o*).

A consequential amendment may be made to the bill immediately after agreement with a Lords' Amendment, and out of sequence with the subsequent amendments (*p*).

(*f*) C. J. (1850) 471.

(*g*) C. J. (1917-18) 315; H. C. Deb. (1918) 101, c. 2204.

(*h*) C. J. (1859) 375.

(*i*) C. J. (1920) 430; H. C. Deb. (1920) 134, c. 1839.

(*j*) C. J. (1881) 445, 448; *ibid.* (1917-18) 308, 310; *ibid.* (1934-35) 323, 334.

(*k*) C. J. (1882) 451; *ibid.* (1917-18) 306, 307, 310; *ibid.* (1920) 510, 511; *ibid.* (1930-31) 383; *ibid.* (1934-35) 325, 333; *ibid.* (1937-38) 343; *ibid.* (1958-39) 339.

(*l*) C. J. (1882) 451; *ibid.* (1917-18) 305, 309, 310; *ibid.* (1920) 509, 512; *ibid.* (1934-35) 323, 324, 332.

(*m*) C. J. (1881) 444; *ibid.* (1917-18) 308, 309; *ibid.* (1937-38) 345.

(*n*) C. J. (1881) 445; *ibid.* (1882) 452; *ibid.* (1917-18) 305, 309, 310; *ibid.* (1934-35) 334.

(*o*) C. J. (1919) 246.

(*p*) C. J. (1934-35) 324.

The title of a bill has been amended, to make it conform with the Lords' Amendments (*g*), and the short title of a bill has been changed by agreement to a Lords' Amendment (*r*).

(4) While disagreeing to the amendment, they may make an amendment to the bill in lieu of the Lords' Amendment to which they have disagreed (*s*); or, where the Lords' Amendment proposes to leave out words and insert other words, an amendment may be made to the words of the bill so restored (*t*).

(5) A Lords' Amendment may be divided, and both parts may be agreed to (*u*), part thereof may be agreed to and part disagreed to (*a*), or both parts may be disagreed to (*b*), or one part may be agreed to and the other amended and agreed to (*c*).

(6) A Lords' Amendment may be agreed to, but the proposed words may be transferred to another place in the bill (*d*).

**Committee to draw up Reasons.**—If any Lords' Amendment has been disagreed to by the Commons it is necessary to appoint a committee to draw up reasons for such disagreement. The committee withdraw immediately and report their reasons at the same sitting, and these are taken as agreed to by the House and communicated by message to the Lords (*e*). If, however, an amendment has been made to the bill in lieu of the amendment which has been disagreed to, or if words restored to the bill are amended, no reason for disagreement is offered and a committee is not appointed (*f*).

**Message to the Lords.**—A message is sent to the Lords to communicate the reasons for disagreement, together with the bill and the amendments, which the Commons may have made to any of the Lords' Amendments, or any consequential amendments to the bill.

According to established usage, when a bill has been returned by either House to the other, with amendments which are disagreed to, a message is sent, by the House which disagrees to the amendment, to acquaint the other with reasons for such disagreement in order to reconcile their differences, and, if possible, by mutual concessions to arrive at an ultimate agreement. If such agreement cannot be secured, the bill is lost for the session.

When one House agrees to amendments made by the other, or does not insist upon its own amendments, or upon its disagreement to amendments, no reasons are offered; for the object of reasons is to persuade the other House, and not to justify a resolution of its own.

On 21 July 1858 the Lords, having made an amendment to the Oaths Bill, insisted upon it, after reasons had been offered against it at a conference; but in the meantime they passed a separate bill virtually to effect the object sought to be attained by the Commons—the admission of Jews to Parliament.

(*g*) C. J. (1854) 486.

(*r*) C. J. (1937-8) 208.

(*s*) C. J. (1920) 512; *ibid.* (1922) 91; *ibid.* (1924) 374.

(*t*) C. J. (1881) 445, 448, 449, 452, 453; *ibid.* (1917-18) 310; *ibid.* (1920) 509, 512, 513; *ibid.* (1930-31) 382, 383.

(*u*) C. J. (1937-8) 346.

(*a*) C. J. (1930-31) 384; *ibid.* (1937-38) 346.

(*b*) C. J. (1930-31) 382.

(*c*) C. J. (1920) 512, 514.

(*d*) C. J. (1890-91) 510; *ibid.* (1937-8) 343.

(*e*) C. J. (1852-53) 808, 809; *ibid.* (1932-33) 277, 278; *ibid.* (1937-38) 348.

(*f*) C. J. (1921) 236; *ibid.* (1932-33) 277.

In order to record the true circumstances of the case, without departing from the usage of Parliament, the Commons agreed to a resolution, "That this House does not consider it necessary to examine the reasons offered by the Lords for insisting upon the exclusion of Jews from Parliament, as, by a bill of the present session, their lordships have provided means for the admission of persons professing the Jewish religion to seats in the legislature." Subsequently a message was sent to acquaint the Lords that the House did not insist upon their disagreement, without any reasons (*g*).

**Bill returned to Lords.**—The bill having been returned to the Lords, that House has now to consider (1) the Commons' reason for disagreeing to a Lords' Amendment, (2) the Commons' Amendment to a Lords' Amendment, and (3) any amendments made to the bill by the Commons.

In regard to (1) the Lords may amend the bill in lieu of the former amendment to which the Commons have disagreed (*h*), or may insist upon their amendment and give a reason therefor (*i*). On the other hand, if they do not insist on their amendment, agreement is reached.

In regard to (2), the Lords may disagree to the Commons' Amendment to a Lords' Amendment, with a reason (*j*), or may further amend the Commons' Amendment (*k*). If, however, they agree to the Commons' Amendment (*l*), in this case also agreement between the two Houses is achieved.

The same alternatives are open to the Lords in (3), where the Commons have made any amendments to the bill.

The bill is returned to the Commons with a message as to the Lords' conclusions. The message varies with the circumstances of each case. In the case of bills in which many amendments have been made by the Lords, the message may inform the Commons that the Lords do not insist on certain of their amendments, but they insist on others, and that they propose other amendments again in lieu of those to which the Commons have disagreed.

**Further proceedings in Commons.**—On the message being received in the Commons, an order is made for the consideration of :

- (1) The Lords' Reason for insisting upon their Amendment (*m*) ;
- (2) The Lords' Reason for disagreeing to the Commons' Amendment to the Lords' Amendment (*n*) ;
- (3) The Lords' Amendment to the Commons' Amendment to the Lords' Amendment (*o*) ;
- (4) The Amendment which the Lords have made to the bill in lieu of their Amendment disagreed to by the Commons (*p*).

(*g*) C. J. (1857-58) 332.

(*h*) C. J. (1929-30) 407; *ibid.* (1930-31) 388; *ibid.* (1937-8) 361.

(*i*) C. J. (1881) 459; *ibid.* (1917-18) 314; *ibid.* (1919) 167; *ibid.* (1929-30) 407.

(*j*) C. J. (1881) 459; *ibid.* (1917-18) 314; *ibid.* (1920) 514.

(*k*) C. J. (1881) 459; *ibid.* (1882) 463; *ibid.* (1917-18) 314; *ibid.* (1920) 514.

(*l*) C. J. (1881) 459.

(*m*) C. J. (1881) 459; *ibid.* (1917-18) 314; *ibid.* (1919) 167.

(*n*) C. J. (1920) 514.

(*o*) C. J. (1881) 459; *ibid.* (1917-18) 314; *ibid.* (1920) 514.

(*p*) C. J. (1917-18) 314; *ibid.* (1937-8) 361.

The consideration may be taken forthwith (*q*) or appointed for a future day (*r*).

(1) *Lords' Reason for insisting upon their Amendment.*—Upon consideration of the Lords' Reason for insisting upon their Amendment disagreed to by the Commons, the latter may not insist upon their disagreement to the Lords' Amendment, and thus agreement between the Houses is reached (*s*). If, however, the Commons insist upon their disagreement, without offering alternative proposals, the bill would normally be lost.

In the case of the Education (England and Wales) Bill, 1906, the order for the consideration of the Lords' Reason was discharged, and the bill was withdrawn (*t*).

In session 1912-13 the Lords insisted upon certain of their Amendments to the Temperance (Scotland) Bill to which the Commons had disagreed, and proposed new amendments in lieu of certain other Amendments to which the Commons had disagreed. The Lords' Amendments were ordered to be printed, but further action was not taken (C. J. (1912-13) 553).

(2) *Lords' Reason for disagreeing to Commons' Amendment to Lords' Amendment.*—On considering the Lords' Reason for disagreeing to an amendment which the Commons have made to a Lords' Amendment, the Commons can amend the bill in lieu of their amendment to the Lords' Amendment disagreed to by the Lords (*u*), or may insist upon their amendment (*a*), or not insist upon it (*b*).

(3) *Lords' Amendment to Commons' Amendment to Lords' Amendment.*—The Commons may further amend the Lords' Amendment to the Commons' Amendment to the Lords' Amendment (*c*), or may disagree thereto and communicate a reason, or may agree to it (*d*).

(4) *Lords' Amendment to the bill in lieu of Lords' Amendment disagreed to by the Commons.*—In the same way as in (3) above, the Commons may amend the Lords' Amendment to the bill, or may disagree thereto and communicate a reason (*e*), or may agree to it (*d*).

In order to secure agreement and save the bill, every effort at compromise is usually made, and this interchange of amendments as has been already stated, can theoretically be carried still further. Usually, however, the proceedings do not go beyond this stage, and one House or the other waives its disagreement, or takes a step which results in the bill being lost.

The chain of events by which a bill originating in the Commons and amended by the Lords would normally be lost may be shown as follows:—

The Commons disagree to the amendment with a reason; and  
The Lords insist on their amendment, and

(*q*) C. J. (1917-18) 314.

(*r*) C. J. (1881) 459.

(*s*) C. J. (1919) 172, 422; *ibid.* (1930-31) 392

(*t*) C. J. (1906) 509.

(*u*) C. J. (1929-30) 504.

(*a*) C. J. (1917-18) 315.

(*b*) C. J. (1929-30) 504.

(*c*) C. J. (1917-18) 316.

(*d*) C. J. (1917-18) 314.

(*e*) C. J. (1929-30) 504.

(*f*) C. J. (1937-38) 367.

The Commons insist on their disagreement to the amendment without offering alternative proposals, or take no action.

It will be seen that each House has one opportunity of receding from the position which it has taken up. It must be remembered, however, that there is no binding rule of order which governs these proceedings in either House, and, if there is a desire to save a bill, some variation in the proceedings may be devised in order to effect this object.

For example, in the case of the Evicted Tenants (Ireland) Bill, 1907, the Commons, instead of insisting on their disagreement to an amendment upon which the Lords had insisted, merely disagreed again with the amendment (*g*).

#### BILL ORIGINATING IN THE LORDS

It is not necessary to describe at length the further stages of a bill originating in the Lords, which has been amended by the Commons; for, as has been observed above, the proceedings are, *mutatis mutandis*, the same as in the case of a Commons' bill. The Lords may—

- (1) agree to the Commons' Amendments (*h*), or disagree thereto, with a reason (*i*); or
- (2) amend the amendments (*k*), and make consequential amendments to the bill (*l*); or
- (3) disagree to an amendment and propose an amendment to the bill in lieu thereof (*m*).

When the bill is returned to the Commons the latter may—

- (1) insist on their amendments, or not insist (*n*); or
- (2) agree to any further amendments which the Lords have made (*o*); or
- (3) amend the bill in lieu of their amendment disagreed to by the Lords (*p*).

To this last amendment the Lords may agree (*q*).

#### PRACTICE WITH REGARD TO BILLS REJECTED

When a bill has been rejected, or lost through disagreement, it should not, according to the practice of Parliament, be reintroduced in the same session. This is involved in the general rule that the same question should not be twice offered. In the case of bills which have passed one House and been rejected by the other the rule is not applied so rigidly as to prevent a portion at any rate of a rejected bill being introduced again as a new bill. It may be well to state the form in which the principle has been authoritatively laid down by each House before giving examples of the manner in which the principle has been relaxed in its application.

(*g*) C. J. (1907) 453.

(*h*) C. J. (1921) 75.

(*i*) C. J. (1906) 475; *ibid.* (1922) 324.

(*k*) C. J. (1922) 324; *ibid.* (1933-34) 299.

(*l*) C. J. (1906) 475; *ibid.* (1933-34) 299.

(*m*) C. J. (1906) 475; *ibid.* (1922) 324; *ibid.* (1931-32) 162.

(*n*) C. J. (1906) 482; *ibid.* (1922) 325.

(*o*) C. J. (1906) 482; *ibid.* (1922) 325; *ibid.* (1931-32) 185; *ibid.* (1933-34) 302.

(*p*) C. J. (1922) 325.

(*q*) C. J. (1922) 327.

The principle was thus stated by the Lords on 17 May 1606: "That when a bill hath been brought into the House, and rejected, another bill of the same argument and matter may not be renewed and begun again in the same House in the same session where the former bill was begun; but if a bill begun in one of the Houses, and there allowed and passed, be disliked and refused in the other, a new bill of the same matter may be drawn and begun again in that House whereunto it was sent; and if, a bill being begun in either of the Houses, and committed, it be thought by the committees that the matter may better proceed by a new bill, it is likewise holden agreeable to order in such case, to draw a new bill, and to bring it into the House" (r).

It was also declared in a protest, signed by seven lords, on 23 February 1691, in reference to the Poll Bill, in which a proviso contained the substance of a bill which had dropped in the same session, "that a bill having been dropped, from a disagreement between the two Houses, ought not, by the known and constant methods of proceedings, to be brought in again in the same session." The Lords, nevertheless, agreed to that bill, but with a special entry, declaring that they would not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament (s).

In the Commons it was agreed for a rule, on 1 June 1610, that "no bill of the same substance be brought in the same session" (t).

**Application of principle.**—When part of a bill has been omitted by the Lords, and the Commons have agreed to such amendment, the part so omitted has been renewed in the same session in the form of a separate bill (u).

Thus when the Lords struck out a provision in the Parliamentary Elections Redistribution Bill of session 1884-85, which enacted that the receipt of medical poor law relief should not disqualify a voter, the Commons agreed to that amendment, and passed a bill which effected the object of that provision (a). In session 1899 the second reading of the Seats for Shop Assistants (Scotland) Bill, which had passed the Commons, was put off for six months by the Lords. A similar bill for England and Ireland was passed by the Commons, and sent to the Lords, by whom it was extended to Scotland by means of an amendment, to which the Commons agreed (b). In session 1908, the Small Landholders (Scotland) Bill, having passed the Commons, was rejected by the Lords. Subsequently certain of its provisions were introduced in the Commons under the title of the Crofters' Commons Grazings Regulation Bill and passed through both Houses (c). In the same session the Licensing Bill was passed by the Commons and rejected by the Lords. The provisions of the bill, which dealt with the exclusion of children from public-houses, were incorporated by the Lords in the Children Bill and were accepted by the Commons as Lords' amendments to that bill (d).

(r) L. J. (1578-1614) 435. The principle given above is condensed from the text of the Journal.

(s) L. J. (1691-98) 90.

(t) C. J. (1547-1628) 434 (1610).

(u) C. J. (1863) 24, 203.

(a) C. J. (1884-85) 317; Parl. Deb. (1884-85) 298, c. 1590.

(b) C. J. (1899) 386.

(c) C. J. (1908) 384, 514.

(d) C. J. (1908) 500.

**Procedure with regard to Lords' bills or amendments affecting Commons' privileges.**—A method of procedure, moreover, has been adopted, with the sanction of both Houses, by which these rules are partially disregarded. When the Lords, out of regard for the privileges of the Commons, defer the consideration of the amendments made by the committee on a bill received from the Commons, for a period beyond the probable duration of the session, if such amendments be otherwise acceptable to them, the Commons appoint a committee to inspect the Lords' Journals, and, on receiving their report, which explains the position of the bill in the Lords, order another bill to be brought in. This bill often has precisely the same title, but its provisions are altered so as to conform to the amendments made in the Lords. In this form it is sent to the Lords, received by them without any objection, and passed. Such a bill is not identically the same as that which preceded it; but it is impossible to deny that it is "of the same argument and matter," and "of the same substance." This proceeding can be resorted to when the Lords pass a bill and send it down to the Commons, with clauses that trench upon their privileges. The Commons can lay the bill aside, and order another, precisely similar, to be brought in, which, in due course, is sent up to the Lords. A proceeding somewhat similar may arise when a bill is returned from the Lords to the Commons with amendments which the Commons cannot entertain consistently with their own privileges. In that case, if the Commons be willing to adopt the amendments, they can order the bill to be laid aside and another to be brought in (*e*).

**Proceedings in Lords with regard to bill laid aside by Commons.**—If a bill has been postponed or laid aside in the House of Commons, the Lords have sometimes appointed a committee to search the Votes and Proceedings of the Commons, and may, if they think fit, introduce another bill and send it to the Commons (*f*).

**Prorogation to revive bills.**—In all the preceding cases, the disagreement of the two Houses is only partial and formal and there is no difference in regard to the entire bill. If the second or third reading of a bill sent from one House to the other be deferred for three or six months, or if it be rejected, the bill cannot be revived in the same session. Hence, Parliament was prorogued from the 21st to the 23rd October, 1689, in order to revive the Bill of Rights, concerning which a difference had arisen between the two Houses, that was fatal to its progress (*g*); in 1707, for a week, in order to permit the revival of a bill dealing with fraudulent commerce with Scotland, which had been rejected by the Lords (*h*); and in 1831, from the 20th October to the 6th December, in order to bring in the third Reform Bill (*i*).

#### PROPOSALS FOR SUSPENDING OR RESUMING BILLS

Proposals have been made for a provision, either by statute or by standing orders, for the suspension of bills from one session to another.

(*e*) C. J. (1836) 777, 810; *ibid.* (1845) 664, 688; *ibid.* (1847-48) 888; *ibid.* (1872) 167.

(*f*) L. J. (1843) 590; *ibid.* (1845) 505.

(*g*) C. J. (1688-93) 271.

(*h*) Burnet, ii. 467; 2 Coxe's Walpole, 8; 2 Hatsell, 127.

(*i*) C. J. (1830-31) 935.



or for resuming proceedings upon such bills, notwithstanding a prorogation. These schemes have been discussed in Parliament and carefully considered by committees; but various considerations have restrained the legislature from disturbing the constitutional law by which parliamentary proceedings are discontinued by a prorogation (*k*).

### INDORSEMENT OF BILLS

The official record of the assent of one House to bills passed, or amendments made by the other, is by indorsement of the bill in old Norman French. Thus, when a bill is passed by the Commons, the Clerk of the House (*l*) writes upon the top of it, "Soit baillé aux seigneurs." When the Lords make amendments it is returned with the indorsement of the Clerk of the Parliaments, "A ceste bille avecque des amendemens les seigneurs sont assentus." When it is sent back with these amendments agreed to, the Clerk of the House of Commons writes, "A ces amendemens les communes sont assentus." When amendments are disagreed to, a message is sent to the Lords stating the fact and communicating the reasons agreed to by the House for their disagreement and the bill is endorsed "Ceste bille est remise aux seigneurs avecque des raisons."

Bills are communicated by the Lords to the Commons with similar indorsements, *mutatis mutandis*. If amendments made by the Lords are agreed to by the Commons, the latter return the bill with the message signifying their agreement. If amendments made by the Commons are agreed to by the Lords, their lordships send a message (*m*), but retain the bill for the Royal Assent (see p. 557).

### ROYAL ASSENT

When bills, either public or private, have been finally agreed to by both Houses, they only await the Royal Assent to give them, as Lord Hale says, "the complement and perfection of a law" (*n*); and from that sanction they cannot be legally withheld (*o*).

(*k*) Earl of Derby's Parliamentary Proceedings Adjournment Bill, 1848, Parl. Deb. (1847-48), 98, c. 329, 981, 1255; *ibid.* 99, c. 246; *ibid.* 100, c. 131; Report of Commons' Committee on Public Business, H. C. 644 (1847-48); Report of Lords' Committee on Public Business, H. L. 95 (1861); Report of Commons' Committee on Business of the House, H. C. 173 (1861); Marquess of Salisbury's Parliamentary Proceedings Bill, 1869, Parl. Deb. (1868-69) 194, c. 588; *ibid.* (1883) 279, c. 2; Report of Joint Committee on Despatch of Business in Parliament, H. C. 386 (1868-69); Reports of Commons' Committees on Public Business, H. C. 268 (1878), and on Abridged Procedure on partly considered bills, H. C. 298 (1890); Report of Joint Committee on Suspension of Bills, H. C. 105 (1928-29). In session 1903, provision was made for resuming in the following session the proceedings on the Port of London Bill as reported from the Joint Committee. A resolution for the resumption of proceedings on the bill was agreed to in the following session, but further progress was not made with the bill, C. J. (1904) 181. In session 1919, a motion for the suspension of further proceedings on the War Emergency Laws (Continuance) Bill until the following session was withdrawn, C. J. (1919) 428, H. C. Deb. (1919) 123, c. 1291. For the suspension of private and provisional order bills, see p. 957.

(*l*) In his absence, the Clerk Assistant is authorized to indorse bills.

(*m*) This message has been received by the Commons after the Royal Assent has been given to the bill, 2 Hatsell, 339.

(*n*) Hale, Jurisd. of Lords, C. 2.

(*o*) See 2 Hatsell, 339; L. J. (1675-81) 756 (1681); Burnet, ii, 274; Campbell. Lives, iii, 354.

So binding is this principle that extreme care is taken that all bills which will be ready for the Royal Assent by the date on which it is to be signified are inserted in the commission, and doubts have arisen whether a bill which is not in the commission may be passed through its final stages after a commission has been submitted to the Sovereign and before it is brought down to Parliament.

For this reason, proceedings on third readings and on Lords' Amendments have been postponed; but this has not been an invariable practice (*p*).

On 3 June 1856, the Commons having adjourned, for want of forty Members, before a commission was received, another commission was appointed for the 5th, and in the meantime intimation was given that no bills should be returned to the Lords agreed to without amendment, or with Lords' Amendments agreed to, until after the commission, lest it should become necessary to alter the commission so as to embrace them.

For the purpose of obtaining the Royal Assent, bills remain in the custody of the Clerk of the Parliaments, except bills for granting aids and supplies to the Crown, which are returned to and kept in the custody of the Commons until the Royal Assent is given; and when the necessity arises, the Lord Chancellor has notice that a commission is wanted. The Clerk of the Parliaments then prepares two sets of the titles of all the bills, one set being for the Clerk of the Crown to insert in the commission, and the other for His Majesty's inspection before he signs the commission. Bills for granting aids and supplies to the Crown are placed first in these sets, and are followed by public bills, local and private bills and personal bills (such as those relating to estates).

Measures submitted for Royal Assent in pursuance of the Provisions of the Church Assembly (Powers) Act, 1919, are placed at the end of the list of bills.

The forms of commissions for declaring the Royal Assent, when Parliament has been opened by the Sovereign, and by commission, are prescribed by the rules made by Her late Majesty Queen Victoria by order in council, pursuant to the Crown Office Act, 1877 (H. C. 87 (1878)).

These commissions now have the wafer great seal attached, instead of the old wax seal.

The Royal Assent is generally given by commission and not in person. The validity of this method is certified by the Statute of 33 Henry 8, c. 21, which requires the commission to be issued under the great seal and the sign-manual. In strict compliance with the words of this statute, the commission is always, "by the King himself, signed with his own hand," and attested by the Clerk of the Crown in Chancery. The only commission issued without the sign-manual was for giving assent to the Regency Bill, 1811, when George III was incapable of signing, and the great seal alone was affixed.

#### PROCEEDINGS ON ROYAL ASSENT

**Royal Assent given by Commissioners.**—The form in which the Royal Assent is signified by commission is as follows. Three or more

(*p*) See Whale Fishery Bill, 10 July, 1789; L. J. (1789) 497.

of the Lords' commissioners, seated on a form between the throne and the woolsack in the House of Lords, command the usher of the Black Rod to signify to the Commons that their attendance is desired in the House of Peers to hear the commission read (see p. 232), and when this message has been delivered the Commons, with the Speaker, immediately come to the bar. The commission is then read at length, and, the titles of the bills being afterwards read by the Clerk of the Crown, the Royal Assent to each is signified by the Clerk of the Parliaments in Norman French, and is so entered in the Lords' Journal.

**Form of Royal Assent.**—A bill for granting aids and supplies to the Crown (see p. 713) being carried up by the Clerk of the House of Commons, is handed to the Clerk of the Parliaments by the Speaker and receives the Royal Assent before all other bills. The assent is pronounced in the words, "Le roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veut." For public and local acts the formula is "Le Roy le veut" and for personal acts "Soit fait comme il est désiré."

**Refusal of Royal Assent.**—The form of words used to express a denial of the Royal Assent would be, "Le Roy s'avisera" (*q*). The necessity of refusing the Royal Assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707 when Queen Anne refused her assent to a bill for settling the militia in Scotland (*r*).

**Assent given by the Sovereign in person.**—The Royal Assent is rarely given in person, the last occasion being on 12 August 1854, when Queen Victoria attended and gave her assent to several bills, and afterwards delivered the usual speech before the prorogation of Parliament.

Formerly bills for making provision for the honour and dignity of the Crown, such as bills for settling the Civil Lists, were generally assented to by the Sovereign in person, immediately after they had passed both Houses (*s*); but in 1901, 1910, 1936, and 1937, the Royal Assent to the Civil List Bills was given by commission (*t*).

When the King comes in person, the Clerk Assistant of the House of Lords waits upon His Majesty in the robing-room, before he enters the House, reads a list of the bills and receives his commands upon them (*u*). After the King is seated in the Throne, the Clerk of the Crown reads the titles of the bills, and the Clerk of the Parliaments makes an obeisance to the Throne, and then signifies His Majesty's assent in the usual manner. The King, who has already given his commands, gives a gentle inclination indicative of assent.

**Assent given in the Sovereign's absence from the realm.**—During the year 1876, Queen Victoria being about to visit the continent during the session, it became a question whether Her Majesty could give

(*q*) L. J. (1509-77) 162 (1540); *ibid.* (1675-81) 394 (1678) (with reasons); *ibid.* (1705-09) 506 (1707).

(*r*) L. J. (1705-09) 506 (1707).

(*s*) C. J. (1819-20) 278; *ibid.* (1830-31) 517, *ibid.* (1837-38) 227.

(*t*) C. J. (1901) 282; *ibid.* (1910) 293; *ibid.* (1935-36) 245; *ibid.* (1936-37) 288.

(*u*) Mr. Birch's evidence, H. C. 413, p. 10 (1843).

her Royal Assent to bills, by commission, during her absence from the realm. No case could be found in which the Royal Assent had been so given; but in the Act 2 William and Mary, "for the exercise of the Government by His Majesty during His Majesty's absence" (in Ireland), there was a proviso that "nothing should be taken to exclude or debar His Majesty, during his absence from the realm, from the exercise of any act of royal power, but that every such act should be as good and effectual as if His Majesty was within this realm"; and it had been stated by the Lord Chancellor (Lyndhurst), 7 August 1845, that any act which Her Majesty "could do as sovereign would have as much validity and effect, if done on the continent of Europe, as if done in her own dominions" (a). The Lord Chancellor (Cairns) also, in 1876, gave it as his opinion (privately) that Her Majesty would be able to give the Royal Assent to bills while absent from the realm; and this course has been followed whenever the necessity arose.

**Report of Royal Assent in the House of Commons.**—When the Commons have returned from the House of Lords to their own chamber, the Speaker reports that the Royal Assent has been given to certain Acts, and this is recorded in the Votes and Proceedings and Journal.

## BILLS PASSED WITH UNUSUAL EXPEDITION

### IN THE HOUSE OF LORDS

The space of time required for the successive stages of a bill is regulated in part by S.O. No. XXXIX, which provides that no two stages be taken in one day and in part by the length of the interval which, often by agreement between the parties, it is considered necessary to allow to elapse between the various stages.

**Suspension of S.O. No. XXXIX.**—It frequently happens, however, that it is necessary for a bill to be passed with greater expedition than the due observance of S.O. No. XXXIX would permit. In order that a bill may become law by a particular date or may be returned to the Commons in sufficient time to enable them to consider amendments made by the Lords, it is often necessary for notice to be put on the order paper, usually in the name of the leader of the House, of a motion to suspend S.O. No. XXXIX for the purpose of taking the bill through its remaining stages. Consolidated Fund Bills are commonly taken through all their stages in one day. It is essential that notice of the proposed suspension of the standing order be given, since by S.O. No. LIV it is declared that no motion shall be granted for making any new standing order or for dispensing with a standing order of the House, unless notice shall have been given in the minutes to consider of the said motion.

**S.O. No. XXXIX suspended for remainder of Session.**—Occasionally towards the close of a session when the press of legislation is heavy a motion is moved to suspend S.O. No. XXXIX for the remainder

(a) Parl. Deb. (1845) 82, c. 1515.

of the session (*b*), or until the adjournment for the autumn recess (*c*), or for the remainder of the week (*d*).

**Bill passed through all stages in one day.**—On rare occasions of emergency, a bill has been passed through all its stages in both Houses in a single day. In such cases, since notice of the suspension of S.O. No. XXXIX cannot be given, a special procedure is observed. S.O.s Nos. LIV and XXXIX are read at the table by the Clerk of the Parliaments and a resolution is moved that it is essential for reasons of national importance that the bill should forthwith be proceeded in with all possible despatch, and that notwithstanding S.O.s Nos. LIV and XXXIX the Lord Chancellor ought forthwith to put the question upon every stage of the said bill in which this House shall think it necessary to proceed therein. The bill is then passed through its stages successively.

This procedure was adopted for a bill to suspend the Habeas Corpus Act in Ireland on 17 February 1866 (*e*); for the Explosive Substances Bill on 9 April 1883 (*f*); for the Postponement of Payments Bill on 3 August 1914 (*g*); and for the Gold Standard (Amendment) Bill on 21 September 1931 (*h*). See also p. 815.

#### IN THE HOUSE OF COMMONS

In the ordinary progress of a bill the proceedings either follow from day to day, or some days are allowed to intervene between each stage subsequent to the first reading. It has already been observed that, in the House of Commons, the report and third reading of a bill are usually taken on the same day, and there are no rules in that House which forbid the taking of several or all the stages of a bill at one sitting. Such a course is only an occasional *départure* from the usage of Parliament, justified by the circumstances of the particular case. Though one stage may follow another with unaccustomed rapidity, the proposal from the chair of the questions consequent upon such procedure lays each stage as open to discussion as at other times (*i*). (For the rule with regard to money bills, and the exceptions thereto, see p. 534, above.)

For example, bills which have been amended in committee are sometimes considered forthwith on report and read the third time (*k*). Again, bills have been committed to a Committee of the whole House immediately after the second reading, and, on their report without amendment, have been read the third time (*l*), or, if amended in committee, have been considered forthwith and read the third time (*m*). A bill has been considered in committee immediately after the second reading, and on being reported with amend-

(*b*) L. J. (1914) 373; *ibid.* (1917-18) 415.

(*c*) L. J. (1918) 202; *ibid.* (1938-9) 332.

(*d*) L. J. (1914-16) 18; *ibid.* (1918) 230, 276; H. L. Deb. (1918) 32, c. 1.

(*e*) L. J. (1866) 41.

(*f*) L. J. (1883) 76.

(*g*) L. J. (1914) 355.

(*h*) L. J. (1930-31) 365.

(*i*) Parl. Deb. (1866) 184, c. 2107.

(*k*) C. J. (1906) 226; *ibid.* (1933-34) 145; *ibid.* (1934-35) 74, *ibid.* (1937-8) 278, 378, 379; *ibid.* (1938-9) 377.

(*l*) C. J. (1908) 512; *ibid.* (1914) 439, 446; *ibid.* (1930-31) 74, 180; *ibid.* (1931-32) 214.

(*m*) C. J. (1914) 438, 446, 457, 460; *ibid.* (1924-25) 74; *ibid.* (1930-31) 356; *ibid.* (1936-37) 43.

ments, has been ordered for consideration on a subsequent day (*n*), or on being reported without amendment has been ordered to be read the third time on a future day (*o*). Sometimes, where a bill has been considered in committee immediately after the second reading, progress has been reported, usually in response to objections to completing the committee stage in one sitting (*p*).

It should be remembered that when it is desired to take forthwith the report stage of a bill which has been reported with amendments from a Committee of the whole House, a question for the consideration of the bill, as amended, has to be proposed; and the motion therefor has been withdrawn (*q*).

When a pressing emergency arises bills are passed through all their stages on the same day (*r*). A bill has been ordered to be brought in upon a resolution reported pursuant to an order of the House on the same day as that on which it was considered in committee, and has been passed through all its stages at the one sitting (*s*).

Again, a bill has been brought from the Lords, passed through all stages, and returned to the Lords on the same day (*t*). Bills have also been passed through both Houses (*u*), and received the Royal Assent (*a*), on the same day.

The Explosive Substances Bill was passed through all its stages, in both Houses, on one day, and received the Royal Assent on the following day at twelve o'clock (*b*).

In the case of the Habeas Corpus Suspension (Ireland) Bill in session 1866, the bill was passed by both Houses on a Saturday, and the Queen being at Osborne, the commission, with the bill annexed, was forwarded to Her Majesty in the morning, and the agreement of both Houses having been communicated later in the day by telegraph, Her Majesty signed the commission and despatched it to Westminster. In 1871, the Queen being at Balmoral, and again, in 1876, while the Queen was in Germany, the telegraph was used in like manner.

His Majesty's Declaration of Abdication Bill was ordered to be brought in on 10 December 1936, and was passed through all its remaining stages in both Houses, and received the Royal Assent on the next day (*c*). See also p. 815.

## PROCEDURE UNDER THE PARLIAMENT ACT, 1911

Conditions are laid down by the Parliament Act, 1911, under which bills which have passed the House of Commons may acquire the force of

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- (*n*) C. J. (1914) 458; *ibid.* (1919) 29, *ibid.* (1920) 19  
 (*o*) C. J. (1923) 259.  
 (*p*) H. C. Deb. (1917) 90, c. 752, 764; *ibid.* (1918) 101, c. 950; *ibid.* (1918) 108 c. 276; *ibid.* (1919) 114, c. 187; *ibid.* (1919) 117, c. 1261, 2142.  
 (*q*) C. J. (1918) 181; H. C. Deb. (1918) 108, c. 2091.  
 (*r*) C. J. (1843) 491, 492; *ibid.* (1847-48) 770; *ibid.* (1852-53) 21, 251, 823, 836, *ibid.* (1914) 427, 435, 437, 461; *ibid.* (1914-16) 137, 257; *ibid.* (1920) 504; *ibid.* (1931-32) 164.  
 (*s*) C. J. (1919) 422  
 (*t*) C. J. (1849) 475, 477.  
 (*u*) C. J. (1802-03) 645, 646, 647; *ibid.* (1883) 126; L. J. (1883) 76; C. J. (1914) 427; L. J. (1914) 377; C. J. (1914) 464; L. J. (1914) 420.  
 (*a*) C. J. (1741-45) 636-39; *ibid.* (1796-97) 555, 557, 558; *ibid.* (1866) 87, 88, 89; *ibid.* (1914) 407, etc.; *ibid.* (1930-31) 423, 424, 425  
 (*b*) C. J. (1883) 126, 128.  
 (*c*) C. J. (1936-37) 57, 58.

law without passing the House of Lords. Public bills, in which term Provisional Order Bills are not included, are divided for the purposes of the Act into "money bills" as defined by the Act, and other public bills. The procedure with regard to "money bills" is described in Chapter XXVIII.

#### BILLS OTHER THAN MONEY BILLS

**Proceedings on the bill.**—In the case of public bills, other than money bills within the meaning of the Act, it is provided that a bill which is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and which, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified to it (*d*). Two years must elapse between the second reading of the bill in the House of Commons in the first of these sessions and its passing in the House of Commons in the third session.

By section 2 (1) a bill containing any provision to extend the maximum duration of Parliament beyond five years is exempted from the provisions of the Act.

By section 2 (3) a bill is rejected by the House of Lords if it is not passed by that House either without amendment or with such amendments only as may be agreed to by both Houses.

**Limits of changes of bill in succeeding Session.**—A bill is deemed to be the same bill as the bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time which has elapsed since the date of the former bill (*e*), or to represent any amendments which have been made by the House of Lords in the former bill in the preceding session.

**Amendments by the Lords in third session.**—If any of the amendments made by the Lords in the third session are agreed to by the Commons they are to be inserted in the bill as presented for the Royal Assent and are to be certified by the Speaker as having been so made and agreed to.

**Suggestion of amendments by the Commons.**—Provision is also made by which the House of Commons may, on the passage of such a bill through that House in the second or third session, suggest further amendments without inserting them in the bill (*f*). Such amendments must be suggested before the third reading of the bill, each suggested amendment being moved as a separate resolution. If agreed to, they would be sent to the House of Lords with the bill after it had passed the House of Commons (*g*). Any such suggested amendments are to be

(*d*) Government of Ireland Act, 1914, and Welsh Church Act, 1914, L. J. (1914) 423 ; C. J. (1914) 466.

(*e*) C. J. (1913) 235, 244 ; *ibid.* (1914) 226, 244, 264.

(*f*) C. J. (1913) 243 ; H. C. Deb. (1913) 55, c. 469.

(*g*) H. C. Deb. (1914) 61, c. 1348 ; *ibid.* (1914) 62, c. 931.

considered by the House of Lords, and, if agreed to by that House, are to be treated as amendments made by the House of Lords and agreed to by the House of Commons. It is also provided that the exercise of this power by the House of Commons shall not prejudice the position of the bill in the event of its rejection by the House of Lords.

**Enacting words.**—Under section 4, a form of enacting words is prescribed for use in the case of a bill passed under the provisions of the Act (*h*).

**Speaker's Certificate.**—A bill other than a money bill when presented to His Majesty for assent in pursuance of section 2 of the Act must be endorsed with the certificate of the Speaker signed by him that the provisions of the section have been duly complied with (*i*). When the Royal Assent is signified to such bills at the same time as to bills which have been agreed upon by both Houses, a separate commission is issued for the purpose (*k*).

## SUBSIDIARY POINTS IN CONNECTION WITH LEGISLATIVE PROCEDURE

### PRINTING AND PROMULGATION OF STATUTES

As soon as an Act has received the Royal Assent a print of it in the form in which it was finally agreed to is prepared in the Public Bill Office of the House of Lords and carefully examined to ensure that the amendments have been correctly inserted. The date on which the Royal Assent was signified is inserted after the title (see p. 487) and the Act is given a chapter number. Acts are numbered serially throughout each session in the order in which they receive the Royal Assent. Public General Acts form one series and are numbered in large Arabic characters; Provisional Order Confirmation Acts and Local Acts form a second series and are numbered in small Roman characters; and Personal Acts, if printed, form a third series and are numbered in small italicised Arabic figures.

After examination a proof copy of the act is certified by the Clerk of Public Bills and sent to the King's Printer (*l*), and a request is sent to the Controller of the Stationery Office to issue instructions for its immediate publication.

Two prints are prepared on a durable vellum which after a further examination in the Public Bill Office are endorsed with the words by which the Royal Assent was signified and signed by the Clerk of the Parliaments and become the official copies of the act. One of these is sent for custody to the Public Record Office and the other is preserved in the House of Lords. In the case of Church Assembly Measures, a third vellum copy is printed and sent to the Church Assembly.

Paper prints of the act are placed on sale to the public, and printed copies are referred to as evidence in courts of law. The original prints

(*h*) See 4 & 5 Geo. 5, c. 90, 91.

(*i*) C. J. (1914) 466.

(*k*) L. J. (1914) 423; C. J. (1914) 466.

(*l*) See question relating to a printer's error in the Elementary Education Act, 1891, Parl. Deb. (1891) 1, c. 687.



may be seen, when necessary, and copies taken on the payment of certain fees.

#### COMMENCEMENT OF ACT

All Acts of Parliament, of which the commencement was not specifically enacted, were formerly held, in law, to take effect from the first day of the session ; but the Clerk or Clerk Assistant of the Parliaments is now required by the Acts of Parliament (Commencement) Act, 1793, to indorse, in English, on every Act of Parliament, immediately after the title, the day, the month, and year when the same shall have passed and received the Royal Assent, which indorsement is to be a part of the Act, and to be the date of its commencement, when no other commencement is provided in the Act itself.

#### TEMPORARY LAWS

Under S.O. No. 45 of the House of Commons the precise duration of every temporary law must be expressed in a distinct clause at the end of the bill. Where such a provision is contained in a bill as first presented to the House, it is generally expressed in a subsection of the citation clause at the end of the bill, and no objection on the ground of the standing order has been taken to this method of drafting. An amendment, however, offered to a clause in a bill, seeking to make the bill of temporary duration, has been ruled out of order on the ground that it should, in compliance with the standing order, be offered as a new clause (*m*).

By the Acts of Parliament (Expiration) Act, 1808, if a bill be in Parliament for the continuance of any temporary Act, and such Act expires before the Royal Assent is given to the bill, the Act to be continued does not lapse in the interval.

#### INFORMALITIES IN BILLS

**Forms not binding in progress of bills.**—The forms commonly observed by both Houses in the passing of bills having been explained, it must be understood that they are not absolutely binding. Though founded upon long parliamentary usage, either House may vary its own peculiar forms, without question elsewhere, and without affecting the validity of any act which has received, in proper form, the ultimate sanction of the three branches of the legislature. If an informality be discovered during the progress of a bill, the House in which it originated will either order the bill to be withdrawn, or will annul the informal proceeding itself, and all subsequent proceedings (*n*) ; but if irregularities escape detection until the bill has passed, no subsequent notice can be taken of them, as it is the business of each House to enforce compliance with its own orders and practice.

#### INFORMALITIES IN THE AGREEMENT OF BOTH HOUSES

Although a departure from the usage of Parliament, during the progress of a bill, will not vitiate a statute, informalities in the final agreement of

(*m*) Parl. Deb. (1907) 181, c. 599 ; H. C. Deb. (1936) 318, c. 707.

(*n*) C. J. (1851) 82, 209 ; *ibid.* (1852-53) 412, 578 ; *ibid.* (1854) 96 ; *ibid.* (1859) 138 ; *ibid.* (1878-79) 300 ; *ibid.* (1926) 217 ; *ibid.* (1927) 270 ; *ibid.* (1937-38) 360.

both Houses have been treated as if they would affect its validity. No decision of a court of law upon this question has ever been obtained, but doubts have arisen there; and in two cases Parliament has thought it advisable to correct, by law, irregularities of this description. It has already been explained that, when one House has made amendments to a bill passed by the other, it must return the bill with the amendments, for the agreement of that House which first passed it. Without such a proceeding the assent of both Houses could not be complete; for, however trivial the amendments may be, the judgment of one House only would be given upon them, and the entire bill, as amended and ready to become law, would not have received the formal concurrence of both Houses. If, therefore, a bill should receive the Royal Assent, without the amendments made by one House having been communicated to the other and agreed to, serious doubts naturally arise concerning the effect of this omission; since the assent of the King, Lords, and Commons, is essential to the validity of an act, except where the provisions of the Parliament Act, 1911, are enforced in relation thereto. It is necessary to consider whether the Royal Assent will cure all prior irregularities, in the same way as the passing of a bill in the Lords would preclude inquiry as to informalities in any previous stage; whether the indorsement on the bill, recording the assent of King, Lords, and Commons, is conclusive evidence of that fact; or, whether the Journals of either House should be permitted to contradict it. The following instances may be regarded as precedents where informalities have been noticed.

In 1829 the Cotton Factories Regulation Bill passed the Commons, and was agreed to by the Lords, with an amendment; but instead of being returned to the Commons it was, by mistake, included in a commission, and received the Royal Assent (o). The amendment was afterwards agreed to by the Commons (p); but, in order to remove all doubts, an Act (q) was passed to declare that the Act "shall be valid and effectual to all intents and purposes, as if the amendment made by the Lords had been agreed to by the Commons before the said Act received the Royal Assent."

In 1843 the Schoolmasters' Widows Fund (Scotland) Bill was returned to the Commons with amendments (r); but, before these were agreed to, the bill was removed from the table, without authority from the House, and carried up to the Lords with other bills. The proper indorsement, viz. "A ces amendemens les communes sont assentus," was not upon this bill; yet the omission was not observed, and the bill received the Royal Assent on 9 May (s). After an examination of precedents, this Act was made valid by a new enactment (t).

**Accidental omission from indorsement.**—In case of any accidental omission in the indorsement the bill should be returned to the House whence it was received; as, on 8 March 1580 (23 Elizabeth), when a schedule was returned to the Commons and the indorsement

(o) C. J. (1829) 399.

(p) C. J. (1829) 407, 410.

(q) C. J. (1829) 411; 10 Geo. 4, c. 43.

(r) C. J. (1843) 251.

(s) C. J. (1843) 273.

(t) C. J. (1843) 298, 491, 492; 6 & 7 Vict. c. lxxxvi (local and personal); H. C. 413 (1843).

amended there ; because “ soit baillé aux seigneurs ” had been omitted and the Lords had therefore no warrant to proceed (*u*).

#### INFORMALITIES IN THE ROYAL ASSENT

The consequence of any defect or informality in the commission or Royal Assent is illustrated in the following case.

In 1546, when Henry VIII was dying, the Royal Assent was not formally given in Parliament to the Act of Attainder against the Duke of Norfolk. The Duke was saved, owing to the King's death. Some years later the Act of Attainder was declared void by statute (*a*) because, after reciting certain informalities in the commission, no record existed showing that the commissioners did give the King's Royal Assent to the bill, which therefore “ remayneth in verie dede as no Acte of Parlyament, but as a bill onelie exhibited in the saide Parlyament, and onelie assented unto by the saide lordes and comons, and not by the saide late king.”

The same Act declared—

“ That the lave of this realme is and alwayes hath byn, that the royall assent or consent of the king or kings of this realme, to any Acte of Parlyament ought to be given in his own royall presence, being personallie in the higher howse of Parlyament, or by his letters patents under his great seale, assigned with his hande, and declared and notified in his absence to the lords spiritual and temporal, and the Comons, assembled together in the higher howse, according to a statute made in the 33rd yere of the reigne of the saide late King Henry VIII.”

**Transposition of titles.**—In 1809 the titles of two bills relating to the town of Worthing were transposed, and the Royal Assent signified to both, so incorrectly indorsed, without further notice. In 1821 the titles of two local acts were, by a similar error, transposed in the indorsement when the bills received the Royal Assent. Each act, consequently, had been passed with the title belonging to the other ; and the mistake was corrected by Act of Parliament (*b*).

**Royal Assent given by mistake.**—In 1844 there were two Eastern Counties Railway Bills in Parliament. One had passed through all its stages, and the other was still pending in the House of Lords, when on 10 May the Royal Assent was given, by mistake, to the latter, instead of to the former. On the discovery of the error an Act was passed by which it was enacted that when the former Act *shall have received the Royal Assent* it shall be as valid and effectual from 10 May as if it had been properly inserted in the commission, and had received the Royal Assent on that day ; and that the other bill shall be in the same state as if its title had not been inserted in the commission, and shall not be deemed to have received the Royal Assent (*c*).

#### CHURCH OF ENGLAND ASSEMBLY (POWERS) ACT, 1919

In addition to bills which have passed both Houses of Parliament and bills in the case of which the provisions of the Parliament Act, 1911, have

(*u*) D'Ewes, 303 ; C. J. (1547-1628) 132 (1580) ; Order and Course of Passing Bills in Parliament, 4to, 1641.

(*a*) 1 Mary, No. 27 ; Stat. of the Realm, i, p. lxxv.

(*b*) 1 & 2 Geo. 4, c. xcv (local and personal).

(*c*) 7 Vict. c. xix (local and personal), C. J. (1844) 328.

been complied with, the Royal Assent is also given to measures which have proceeded in accordance with the provisions of the Church of England Assembly (Powers) Act, 1919 (*d*), and have been presented to His Majesty for the Royal Assent in accordance with a resolution agreed to by each House of Parliament (*e*). Such a resolution cannot be proposed in either House until a report of the Ecclesiastical Committee stating the nature and legal effect of the measure and the committee's views as to its expediency, especially with regard to the constitutional rights of all His Majesty's subjects, together with the text of the measure, has been laid before it (*f*) and the motion, therefore, is not open to amendment (*g*).

Motions for the submission of a measure have sometimes been agreed to by one House and disagreed to by the other (L. J. (1926) 55, 244; C. J. (1926) 49, 378). If in one session no motion for submitting a measure is made, the measure and report are laid again in the following session (L. J. (1924-25) 409; *ibid.* (1926) 25; C. J. (1924-25) 443; *ibid.* (1926) 7).

*The Ecclesiastical Committee.*—The Ecclesiastical Committee is a statutory committee consisting of fifteen Peers nominated by the Lord Chancellor and fifteen members of the House of Commons nominated by the Speaker, and is nominated at the beginning of a Parliament and continues for its duration (*h*). It may act through twelve of its members and may sit whether Parliament be sitting or not.

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(*d*) 9 & 10 Geo. 5, c. 76; L. J. (1920) 597; *ibid.* (1921) 251, 313, 381; *ibid.* (1922) 159, 377, etc.

(*e*) L. J. (1920) 521; C. J. (1920) 485, etc.

(*f*) L. J. (1920) 496; C. J. (1920) 454, etc.

(*g*) H.C. Deb. (1926) 200, c. 1531.

(*h*) 9 & 10 Geo. 5, c. 76, s. 2; L. J. (1920) 356; *ibid.* (1922) 443; H. L. Deb. (1924) 56, c. 185, 1937; C. J. (1920) 334; *ibid.* (1922) 364; *ibid.* (1924) 39, 84; *ibid.* (1924-25) 72; *ibid.* (1929-30) 34; *ibid.* (1931-32) 26; *ibid.* (1935-36) 30.

## THE SYSTEM OF COMMITTEES

In both Houses of Parliament the practice of delegating to small bodies of Members, regarded as representing the House itself, the consideration of questions, which, as involving points of detail or questions of a technical nature, are unsuited to the House as a whole, is as old as any part of their settled procedure. In the course of time the various functions of these bodies were differentiated into a few fixed types ; and a standard of size appropriate to each of these functions was also arrived at by experiment. While for certain functions of a quasi-judicial character four or five members were deemed sufficient, at the other end of the scale, for matters of general interest the notion of a committee was extended to include the whole membership of the House.

Each House accordingly now possesses an organized system of committees which comprises committees of the whole House, select and sessional committees and committees on private bills and, in the House of Commons, also standing committees on public bills. The functions of these committees include the consideration and amendment of public and private bills, inquiries (sometimes of a quasi-judicial character) into matters which the House refers to them for investigation, and (for domestic purposes) functions of an administrative character. In the Commons specially appointed committees of the whole House impose taxation and control expenditure. In addition, the two Houses sometimes collaborate in joint committees which consist of select committees of each House sitting and voting together. In this chapter the procedure of these committees will be described in the following order ;

(1) Committees of the whole House ; (2) Select and Sessional Committees ; (3) Standing Committees ; (4) Joint Committees.

Private bill committees are dealt with in Book III (see pp. 911-49).

## I. COMMITTEES OF THE WHOLE HOUSE

A committee of the whole House consists, as its name implies, of all the members of the House. It is, in fact, the House itself in a less formal guise, presided over by a chairman instead of by the Speaker and conducting its business according to more flexible rules of procedure (a). For instance, a Member may speak more than once to the same question, and a motion does not require a seconder. Like many English institutions it originated in the special political conditions of a particular period—

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(a) See S.O. No. XL, for an indication of the purpose of a committee of the whole House in the Lords. In the Commons committees of the whole House are based upon practice, and their composition and procedure are tacitly assumed by the standing orders and modified only in details.

in the first half of the seventeenth century during the struggle between the Crown and the Commons—but is continued for reasons of practical convenience but little connected with its origin.

#### FUNCTIONS OF COMMITTEES OF THE WHOLE HOUSE

The function appropriate to a Committee of the whole House is now recognized to be deliberation and not inquiry. In both Houses the provisions of public bills may be considered in a Committee of the whole House, see p. 503. In the Commons, all matters concerning the imposition of taxes or the grant of public money must be considered by the Committees of Supply or Ways and Means or other Committees of the whole House (see p. 655) as a preliminary to legislation; and any other questions which, in the opinion of the House may be more fitly discussed in committee are dealt with in that manner (*b*). Such matters are, however, rare in modern procedure, and the functions of Committees of the whole House may be regarded as practically limited to the consideration of public bills and of certain financial business. As the procedure in Committees of the whole House which is relative to these matters is fully described in the chapter on public bills and those on public finance respectively, no more need be said here than is necessary to explain the purely formal procedure which is common to all Committees of the whole House irrespective of the nature of the business upon which they are engaged.

#### APPOINTMENT OF COMMITTEES OF THE WHOLE HOUSE

A Committee of the whole House is appointed in the Lords by an order "that the House be put into a committee" which is followed by adjournment of the House during pleasure. In the Commons it is appointed by a resolution that the House shall immediately or on a future day resolve itself into a Committee of the whole House. Under S.O. No. 16 whenever an order of the day is read for the House to resolve itself into committee, the Speaker leaves the chair without putting any question, and the House thereupon resolves itself into such committee, unless notice of an instruction to the committee has been given (when such instruction must be first disposed of) or unless, on first going into Committee of Supply on the navy, army, air or civil estimates respectively, or on any vote of credit, an amendment is moved or question raised relating to the estimates proposed to be taken in supply.

An instruction is moved as a distinct question after the order of the day for the committee has been read, and must be considered before the Speaker leaves the chair.

When the order of the day for the Committee of Supply in one of the cases excepted under S.O. No. 16 is read, the question that Mr. Speaker do now leave the chair has to be proposed, and the general principles which govern debate and amendment apply to such occasions.

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(*b*) National Education, 1856, C. J. (1856), 87, Parl. Deb. (1856) 140, c. 2015; Relations between the two Houses and duration of Parliament, 1910, C. J. (1910) 71. See also the Speaker's ruling, 17 July 1905, that resolutions dealing with the redistribution of seats should be considered in a Committee of the whole House, Parl. Deb. (1905) 149, c. 897.

When the Speaker has left the chair, the mace is removed from the table and placed under it, and the committee commences its sitting.

**Order of Reference.**—A committee can only consider those matters which have been submitted to it by the House in the order under which the committee is appointed. This order is called the order of reference of the committee. If a Bill is committed to the committee, the whole bill is the order of reference. If it be desired that other matters should also be considered an instruction is given by the House to empower the committee to entertain them (see p. 471).

#### CHAIRMEN OF COMMITTEES OF THE WHOLE HOUSE

In the Lords the chair is taken by the Chairman of Committees unless the House otherwise directs (*c*). If the Chairman of Committees or any Lord appointed by the House in his place shall be absent, unless by leave of the committee, the House is resumed. The committee cannot proceed to business unless a chairman is appointed by the House, but another chairman is usually appointed before the House goes into committee, or for the whole day.

In the Commons the chair (at the table) is generally taken by the Chairman of the Committee of Ways and Means (see p. 238), or in his absence by the Deputy Chairman. In the absence of the Chairman of Ways and Means and the Deputy Chairman, the chair of a Committee of the whole House is usually taken by one of those ten Members whom, in pursuance of the provision contained in S.O. No. 80 (4), the Speaker nominates at the commencement of every session to act as temporary chairmen of committees when requested to do so by the Chairman of Ways and Means. In the course of a sitting of a Committee of the whole House it is customary for the chairman when he so desires to withdraw and to be replaced by another Member without any question. In a Committee of the whole House it is customary for the Clerk Assistant to officiate as clerk.

**Powers and duties of Chairman.**—Order in debate in a committee is enforced by the chairman as he is responsible for the conduct of business therein and from his decision no appeal should be made to the Speaker (*d*). Nor should an appeal from a decision given by the Deputy Chairman (*e*) or a temporary chairman (*f*) be made to the Chairman of Ways and Means on his resuming the chair. Except when a temporary chairman is in the chair, the rules regulating the closure of debate are as operative in a committee as in the House itself and are enforced in the same manner. The rules observed by the House regarding order in debate are followed in committee. As reference to debate in com-

(*c*) S.O. No. XLI.

(*d*) Parl. Deb. (1893) 9, c. 975; *ibid.* (1901) 98, c. 978; *ibid.* 99, c. 365; *ibid.* (1904) 135, c. 722; H. C. Deb. (1912-13) 48, c. 749. But see C. J. (1836) 104; *ibid.* (1854-55) 352; Parl. Deb. (1855) 139, c. 486; H. C. Deb. (1912) 40, c. 1275, 1338; and Parl. Deb. (1853) 126, c. 1243.

(*e*) Parl. Deb. (1906) 157, c. 731.

(*f*) Parl. Deb. (1893-94) 18, c. 1875-83

mittee is not permitted in the House, reference in committee to the conduct of the Speaker is not allowed; nor can the enforcement of closure at a previous sitting of the committee be discussed (*g*). By S.O. No. 18 (see p. 440), the chairman is empowered to check irrelevant or tedious repetition of debate. The rule that a Member who has used objectionable words must explain or retract the same, or offer an apology (see p. 441), is as operative in committee as it is in the House. A division which in the opinion of the chairman is unnecessarily claimed, can be dealt with by him in pursuance of S.O. No. 31 (see p. 443). The chairman possesses the power under S.O. No. 19 (see p. 442) of directing a Member whose conduct is grossly disorderly, to withdraw immediately (*h*); but the suspension of Members from the service of the House and other serious forms of punishment, such as committal, are inflicted by the House itself with the Speaker in the chair. The Chairman, therefore, leaves the chair to report the circumstances to the House when words have been taken down to be reported to the House (*i*), or when he has named a Member (see p. 441) for disregarding the authority of the Chair (*j*), or on account of persistent and wilful obstruction (*k*). In the event of grave disorder arising in Committee of the whole House, the same course would no doubt be followed.

#### INTERRUPTION OF PROCEEDINGS IN COMMITTEE OF THE WHOLE HOUSE

**Summons to attend in the House of Peers.**—If an occasion of public business arises with which the House is concerned, as, for example, if the Usher of the Black Rod summons the House to attend His Majesty or the Lords Commissioners in the House of Peers, the Speaker resumes the chair at once without any report from the committee.

**Absence of a quorum.**—When the presence of less than forty Members in a Committee of the whole House has been established, the chairman leaves the chair and the House is resumed (see p. 313).

**Complaint of breach of privilege.**—If complaint is made in Committee of the whole House of a breach of privilege which has been recently committed and requires instant attention, the chairman leaves the chair on an order to report progress (*l*) (see p. 574).

**Disorder in Committee.**—The chairman may have to leave the chair to report circumstances of disorder under S.O. No. 17 (see above, p. 444).

After any interruption has been dealt with, the House may again forthwith resolve itself into the Committee.

#### PROCEDURE OF COMMITTEES OF THE WHOLE HOUSE

Proceedings in committee are conducted for the most part in the same manner as when the House is sitting. In the Lords a Peer addresses

(*g*) Parl. Deb. (1888) 323, c. 1446.

(*h*) C. J. (1893-94) 428.

(*i*) C. J. (1547-1628) 866; *ibid.* (1714-18) 653; *ibid.* (1851-52) 313; *ibid.* (1852-53) 461; *ibid.* (1877) 375; *ibid.* (1893-94) 469.

(*j*) C. J. (1881) 111; *ibid.* (1890) 72; *ibid.* (1901) 62; Parl. Deb. (1901) 90, c. 691; C. J. (1904) 389; *ibid.* (1908) 404; *ibid.* (1923) 156, 237.

(*k*) C. J. (1882) 323; *ibid.* (1926) 116.

(*l*) C. J. (1888) 483.



himself to their Lordships as at other times : in the Commons a Member addresses the chairman who performs in committee all the duties which devolve upon the Speaker in the House. He calls the Members as they rise to speak, puts the question, maintains order and gives the casting vote in case of an equality of voices (see p. 410).

The main difference between the proceedings of the committee and those of the House is that in the former a Member is entitled to speak more than once, in order that the details of the question or bill may have the most minute examination ; or, as it is expressed in the Lords' Standing Order No. XL " To have more freedom of speech, and that arguments may be used *pro et contra* " ; though this unrestricted right of debate is not taken advantage of to any great extent except in periods of obstruction. Members must speak standing and uncovered as when the House is sitting. A motion for the previous question (see p. 384), is not admitted in a Committee of the whole House.

**Motions for Resolutions.**—It is not necessary to give notice of the express terms of the resolutions intended to be proposed in a Committee of the whole House, unless the committee is appointed under the procedure of S.O. No. 69 (see p. 659), although such resolution must be within the terms of the order under which the committee was appointed. Similarly, notice is not required of amendments which it is proposed to move to resolutions or bills in Committee of the whole House, although for the convenience of the House such notice is usually given. A motion or amendment in committee does not need a seconder. The practice of the House by which a motion or amendment embodying several propositions is divided by the Chair if objection is taken to it on that account, so that questions may be put on each proposition separately, is not followed in Committee of the whole House (*m*). Resolutions to be proposed in a Committee of the whole House can be moved according to the order suggested by the discretion of the mover ; and, after a motion for a resolution has been proposed from the chair, a motion to postpone such motion, to obtain priority for another resolution, would be out of order. When a resolution has been proposed from the chair, unless progress be reported, it must be agreed to either with or without amendment, negatived or withdrawn (*n*).

**Reasoned amendments.**—Since the primary purpose of the committee is to consider and amend in detail matters which have been referred to it, and since such matters have, in the case of bills, previously been agreed to in principle by the House or, in the case of the three kinds of committees dealing with public charges (see p. 655-8) are matters in which the initiative properly belongs to the Government, it is not usually in order in Committee of the whole House to move an amendment to leave out all the words after the first word in a resolution in order to add other words. There are precedents, however, for amendments of this type being moved in Committee of the whole House upon resolutions (not

(*m*) H. C. Deb. (1909) 4, c. 1467, 1737 ; *ibid.* (1912) 43, c. 1483 ; *ibid.* (1916) 83, c. 560 ; *ibid.* (1921) 141, c. 1970 ; *ibid.* (1922) 159, c. 1384. See also p. 751.

(*n*) Parl. Deb. (1858) 149, c. 2066.

imposing charges) which were preliminary to the introduction of bills (o).

**Questions of sums and dates.**—On 3 November 1675 it was declared to be an ancient order "that when there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and the longest time ought first to be put to the question" (p) in order "that the charge may be made as easy upon the people as possible." The application of this rule in the case of bills is rendered unnecessary by modern usage under which provisions involving charges are printed in bills when presented instead of, as formerly, requiring to be moved in committee. The principle enforced by the rule, however, requires occasionally to be followed in the Committees of Supply (see pp. 698-99), and Ways and Means (see p. 752). It might if the need arose be observed by the House in other cases.

**Royal Message read.**—A message from the Crown, which has been referred to a Committee of the whole House, and resolutions which regulate its proceedings, are read by a clerk at the table, so soon as the committee has been entered upon.

**Procedure when business is not completed at the end of a Sitting.**—A Committee of the whole House has no power either to adjourn its own sitting or to adjourn its consideration of any matter for a future sitting (q). If its consideration of the matter be not concluded, or if all the matters referred to it have not been considered, in the Lords, the House is resumed and the chairman moves "that the House be again put into committee" on a future day. S.O. No. XLIII directs that, when the House is put into a Committee of the whole House, the House shall not be resumed without the unanimous consent of the committee, unless upon a question put by the Lord in the chair. In the Commons, the Chairman is directed (a question to that effect having been put and agreed to) to "report progress, and ask leave to sit again." On such a report the House has occasionally thereupon again resolved itself into a committee (see p. 531). If the committee has agreed to certain resolutions, but is unable to conclude the discussion of other resolutions, it is customary to direct the chairman to report the former, and to report progress upon the resolution under consideration when the proceedings of the committee are brought to a close. So entirely is the principle of adjourning debate in Committee of the whole House ignored, that when a resolution has been proposed, and progress reported before it was agreed to, resolutions upon other distinct matters have been proposed and agreed to at ensuing sittings of the committee, and the resolution first proposed taken up again on a more distant day.

Thus, on 17 February 1851, in Committee of Ways and Means, a resolution for the continuance of income tax was proposed and progress reported. On 18 March, a resolution was agreed to for paying eight million pounds out of

(o) Committee on Government of Canada, C. J. (1837) 264; Committee on Government of India, C. J. (1858) 148.

(p) C. J. (1675) 367; 3 Grey Deb. 381-88.

(q) Parl. Deb. (1902) 108, c. 392. At the general desire of the committee, the sitting of a Committee of the whole House was suspended for a certain time on the following occasions: Parl. Deb. (1848) 101, c. 90; H. C. Deb (1909) 4, c. 520; *ibid.* (1920) 129, c. 1950; see also C. J. (1667-87) 68.

the consolidated fund; and on 4 April, the resolution for the continuance of income tax was again proposed and agreed to (*r*). On 28 April 1853, a resolution was proposed for income tax and progress reported. The committee sat again the same day, when, instead of resuming the discussion on that resolution, another resolution was proposed for exchequer bills; and on 29 April the resolution upon the income tax was again proposed (*s*).

According to modern practice, proceedings in Committee of Ways and Means on the Budget (see p. 753), are resumed on the resolution on which progress has been reported (C. J. (1943-44) 100, 101, etc.).

A similar course is followed in Committee of Supply (*t*). When a motion, which has been considered in committee, but not disposed of, is again submitted to the committee, the chairman proposes the question thereon disengaged from any amendment which may have been already proposed thereto, as the renewal of the amendment proposed on a previous occasion is left to the option of the committee (*u*). Accordingly a Member cannot claim to speak first on the renewal of a debate in committee, on the ground that he was in possession of the committee when the chairman had reported progress (*a*).

**Motions to report progress, etc.**—It is the practice for Members who desire to close the sitting of a committee to move that the "chairman do report progress and ask leave to sit again" in order to put an end to the proceedings of the committee on that day, this motion in committee being analogous to that frequently made in the House for adjourning the debate. A motion may also be moved "that the chairman do now leave the chair," but this motion, if carried, supersedes the order of the day for the committee and converts it into a dropped order, as in this case, when the Speaker resumes the chair, no report whatever is made from the committee (*b*). The same result is obtained if, when the chairman reports progress in the matter referred to the committee, he refrains, upon a direction given by the Member who had obtained the appointment of the committee, from asking leave to sit again (*c*). A motion to report progress having been negatived, it cannot be repeated during the pendency of the same question, being subject to the same rule as that observed in the House itself, which will not admit of a motion for the adjournment of a debate to be repeated without some intermediate proceeding (see p. 383). It has therefore been customary to alternate the motion for reporting progress with a motion "that the chairman do now leave the chair" (*d*).

On 7 June 1858, in committee on the Government of India the question for reporting progress having been negatived, the committee some time afterwards were prepared to assent to such a motion; but, in order to adhere

(*r*) C. J. (1851-52) 57, 104, 145

(*s*) C. J. (1852-53) 442, 446.

(*t*) Parl. Deb. (1883) 280, c. 1713

(*u*) Parl. Deb. (1887) 319, c. 1629, *ibid.* (1904) 133, c. 1530.

(*a*) Parl. Deb. (1858) 150, c. 1615; H. C. Deb. (1915) 69, c. 600, *ibid.* (1920) 128, c. 431; *ibid.* (1920) 131, c. 709; *ibid.* (1943-44) 400, c. 955.

(*b*) C. J. (1831) 403; *ibid.* (1908) 478; *ibid.* (1924) 197.

(*c*) Training Colleges (Ireland) Loans, C. J. (1891) 501.

(*d*) C. J. (1877) 312; *ibid.* (1920-30) 364, but see H. C. Deb. (1937-38) 336, c. 1001-2 and Decision 2180.

to the rule, the chairman put the question upon a formal part of an amendment which had been proposed, before he proceeded to put the question for reporting progress (*e*).

**Report of Resolutions.**—When a Committee of the whole House has completed its proceedings the chairman proposes the question “that I do report this resolution (or resolutions) to the House” and, upon this question being agreed to, leaves the chair for the purpose. Formerly, before the chairman could leave the chair another question required to be put, that he “do now leave the chair”; but now, pursuant to the direction given by S.O. No. 51, when he has been ordered to make a report to the House, the chairman leaves the chair without question put. No reference can be made in the House to the report or proceedings of the committee until presentation of the report provides the House officially with information upon these matters (*f*).

**Entry of Committee Proceedings in Parliamentary Records.**

—In the Commons proceedings of Committees of the whole House have been entered in the Journals since 21 February 1829 (*g*).

In the Commons Journals and Votes and Proceedings, all amendments in committees on bills are entered in extenso except amendments agreed to without amendment and without being divided upon. The Lords have more recently adopted a similar form of entry in their Journals.

PROCEDURE ON RESOLUTIONS REPORTED BY A COMMITTEE

By S.O. No. 51 reports from Committees of the whole House are brought up without any question being put. In the case of resolutions creating a charge upon the people or authorizing a grant from public revenue, as is mentioned on p. 734, the House orders the report to be received on a future day: but the report of resolutions upon other matters may be received immediately (*h*). The resolutions reported by a committee are in theory twice read before they are agreed to by the House. But according to present practice the first reading is omitted and no question for a second reading is proposed from the chair, but the resolution itself is read by the clerk at the table before it can be considered by the House. This proceeding is taken to be the second reading of the resolution. When several resolutions are reported, each resolution is read and either postponed, or considered and disposed of by the House, before the next is taken. Amendments may be moved immediately after the clerk has read the resolution; and after such amendment has been disposed of, or if no amendments are moved, the Speaker proposes the question “that this House doth agree with the committee in the said resolution,” and upon this question debate may take place, but, once it has been proposed, no amendment (or further amendment) may be moved (*i*). Amendments or debate, arising upon the consideration of

(*e*) C. J. (1857–58) 214; Parl. Deb. (1858) 150, c. 1688. See also C. J. (1860) 323.

(*f*) Parl. Deb. (1852–53) 126, c. 1245.

(*g*) C. J. (1829) 78.

(*h*) Established Church (Ireland) Report, C. J. (1867–68) 160

(*i*) Parl. Deb. (1908) 195, c. 516.

the report of a resolution, must be strictly relevant thereto (*j*). Every resolution may be amended (*k*), disagreed to (*l*), postponed (*m*) or re-committed to the committee (*n*).

## 2. SELECT COMMITTEES

### APPOINTMENT AND NOMINATION

Select Committees, that is, committees composed of a number of members specially named, are appointed by each House from time to time to consider, inquire into, or deal with particular matters or bills. In addition, a number of committees are re-appointed in both Houses at the beginning of every session in pursuance either of a standing order or of an order regularly renewed. These sessional committees are appointed to consider all subjects of a particular nature arising during the course of the session, or such of them as are referred to the committee by the House, or to perform other functions of a permanent nature.

Select committees are usually *appointed* in each House on motion after notice, but sometimes by an amendment to a question (*o*). Where the appointment of a committee is prescribed by standing order, the *nomination* only is renewed from session to session (see *e.g.* p. 644).

In the House of Commons the committees by which opposed private bills and provisional order bills are usually considered are appointed, not by the House, but by the Committee of Selection under the standing orders relating to private business, (see p. 858) and are not designated select committees.

The appointment of a select committee and the nomination of the members of the committee must be the subject of separate motions (*p*); nor is it in order, on a motion for the appointment of a select committee, to discuss the names of the members who, it is proposed, shall compose it (*q*).

**Maximum number of members.**—In the Lords there is no rule limiting the number of members who may be named of a select committee other than a committee on a local bill or a provisional order bill, but in the Commons no select committee may, without the leave of the House, consist of more than fifteen members, and such leave may not be moved for without notice (S.O. No. 53).

In compliance with this order select committees of the House of Commons

(*j*) Parl. Deb. (1864) 174, c. 1551; *ibid.* (1907) 174, c. 1697, *ibid.* (1908) 195, c. 516; H. C. Deb. (1915) 73, c. 205; *ibid.* (1923) 164, c. 2544.

(*k*) C. J. (1857) 227; *ibid.* (1864-65) 333.

(*l*) C. J. (1819-20) 379; *ibid.* (1821-22) 440, *ibid.* (1840) 169

(*m*) C. J. (1822-23) 314; *ibid.* (1828) 509.

(*n*) C. J. (1822-23) 314; *ibid.* (1864-65) 122; *ibid.* (1823) 533.

(*o*) C. J. (1878) 376; *ibid.* (1884) 98; *ibid.* (1884-85) 238; *ibid.* (1924) 387. A select committee has been appointed to consider the subject-matter of a bill by means of an amendment to the question for the second reading of the bill, C. J. (1854-55) 238; *ibid.* (1870) 90.

(*p*) Parl. Deb. (1873) 216, c. 59; for scope of debate on motion for appointing, see H. C. Deb. (1937-8) 337, c. 2157; *ibid.* (1938-9) 342, c. 906; see also Parl. Deb. (1905) 146, c. 993.

(*q*) Parl. Deb. (1880) 252, c. 489.

are usually composed of fifteen members or less. In special circumstances, however, committees of a larger number are appointed (*r*).

**Modes of choosing members of Select Committees.**—Unless the House otherwise orders, the members of a select committee are named by the House upon the motion of some Member.

In both Houses the standing orders require previous notice to be given of the names of Members intended to be proposed as members of select committees (S.O. No. L (H.L.); S.O. No. 55 (H.C.)). A select committee can, therefore, be nominated immediately upon its appointment only if previous notice has been given both of the motion for the appointment of the committee and of the names of the proposed members (*s*). This rule does not, however, apply to committees upon matters of privilege (*t*), committees appointed to draw up reasons to be assigned to the other House for disagreeing to amendments made by that House to a bill, or committees appointed in fulfilment of the orders or intentions of the House.

In the Commons a Member intending to move for the appointment of a select committee must endeavour to ascertain previously whether each Member proposed to be named by him to serve on such committee will give his attendance thereupon (S.O. No. 54).

It was formerly the practice in both Houses to leave it to the Member on whose motion the committee had been appointed to move the names of the members to compose it, but in the Commons it is now customary for the members of select committees to be nominated on the motion of one of the government "Whips" even where the committee was moved for by an unofficial Member.

In strictness a motion ought to be made, and a question put, in respect of each Member proposed as a member of a committee, that he be a member (or another member) of the committee. In practice, however, the Speaker merely reads the list of the proposed members, and, if no objection is taken to any of the proposed names as they are read, they are considered to have been accepted by the House (*u*). If, however, objection

(*r*) Sixteen members (National Provident Institution) C. J. (1886) 153; seventeen members (Loans for Local Works), C. J. (1880) 84; nineteen members (Betting Duty) C. J. (1923) 128; twenty-one members (Conveyancing and Settled Land Bills), C. J. (1882) 260 (Home Work), C. J. (1907) 120; twenty-two members (Diplomatic and Consular Services), C. J. (1871) 61; twenty-three members (Merchant Ships Laden in Bulk), C. J. (1880) 84; twenty-three members, subsequently increased to twenty-seven (Merchant Shipping), C. J. (1880) 176, 180; twenty-four members (Estimates), C. J. (1921) 229; twenty-five members (Bank Acts), C. J. (1857) 141; twenty-five members specially named, and all gentlemen of the long robe members of the House (Oaths Taken by Members), C. J. (1857) 369; twenty-six members (National Expenditure) C. J. (1917-18) 170; twenty-seven members (Railway Rates and Agricultural Tenants' Compensation Bills), C. J. (1882) 21, 376; twenty-eight members (Estimates), C. J. (1924) 77; *ibid.* (1924-25), 90, etc.; thirty members (Leasing Powers, &c.) (Ireland) Bills), C. J. (1852-53) 284; thirty-one members (Indian Territories), C. J. (1852) 168; thirty-two members (National Expenditure) C. J. (1939-40) 103, etc.; thirty-three members (Parliamentary Procedure), C. J. (1886) 92.

(*s*) When notice is given of a motion for the appointment of a select committee, it is usual, in the Commons, at the same time to give notice of the names of the members intended to be proposed as members of the committee, of the number to be proposed as the quorum, and of the powers with which it is proposed the committee should be invested.

(*t*) Parl. Deb. (1857) 146, c. 97; *ibid.* (1857-58) 148, cc. 1855-67.

(*u*) Parl. Deb. (1857) 147, c. 1011.

is taken to any particular name, or notice has been given of an amendment proposing the substitution of another member for one of those proposed, the Speaker proposes a question upon the name to which objection is taken for the determination of the House.

An amendment proposing the substitution of an alternative name for one of those on the list of proposed members cannot be moved without notice (*a*).

The rejection of an amendment proposing the substitution of the name of one member for that of another, does not preclude a motion from being subsequently made that such member be another member of the committee provided the number of the committee would not thereby be increased beyond fifteen or such other number as the House may have agreed upon (*b*).

It may also be moved, by way of amendment to the question that a particular Member be a member of a committee, that the committee be chosen by ballot (*c*), or that it be nominated wholly (*d*) or partially (*e*) by the Committee of Selection, or, where the committee is not nominated immediately on its appointment, that the order for the appointment of the committee be discharged (*f*) or that the nomination of the committee be postponed for six months (*g*), or that the order that the committee do consist of a certain number of members be discharged (*h*).

A compendious form of this mode of choosing a committee is for the House to order, on motion, that such Members as were members of a select committee which has already discharged its functions, and are still Members of the House, be the members of the committee (*i*).

Where an inquiry of a quasi-judicial character is referred to a select committee, it is usual in both Houses to delegate the nomination of the members of the committee (*j*), or some of them (*k*), to the Committee of Selection (see pp. 858, 915), and a similar course is followed in the case of select committees on hybrid bills, private bills and provisional order bills (see pp. 505, 911, 962, 981). In the Lords, appointments by the Committee of Selection are subject to the approval of the House, but it is otherwise in the Commons.

In both Houses select committees have been chosen by secret ballot (*l*), and in special cases other methods have been adopted by the Commons, as where two members were named by the House, and the others were

(*a*) Parl. Deb. (1860) 158, c. 1176; *ibid.* (1864) 174, cc. 500, 1568; *ibid.* (1876) 227, c. 1495; *ibid.* (1881) 262, c. 222; *ibid.* (1882) 274, c. 284; H. C. Deb (1917-18) 95, c. 226.

(*b*) C. J. (1810) 37-38; Parl. Deb. (1877) 234, c. 200

(*c*) C. J. (1805-6) 214; *ibid.* (1833) 512.

(*d*) C. J. (1860), 294, 304; cf. *ibid.* (1864), 275

(*e*) C. J. (1873) 307.

(*f*) C. J. (1844) 300; *ibid.* (1870) 223.

(*g*) C. J. (1854) 166, 251; *ibid.* (1867) 261

(*h*) C. J. (1868-69) 278.

(*i*) C. J. (1806-7) 89; *ibid.* (1812-13) 242; *ibid.* (1817) 318.

(*j*) L. J. (1878) 208; *ibid.* (1890) 463; C. J. (1857) 43; *ibid.* (1860) 304; *ibid.* (1883) 143; *ibid.* (1887) 108.

(*k*) C. J. (1868-69) 85, 87; *ibid.* (1878-79) 263; *ibid.* (1880) 47. Committees on public bills, C. J. (1890-91) 96; *ibid.* (1892) 134; *ibid.* (1907) 204.

(*l*) L. J. (1794-96) 198; *ibid.* (1796-98) 96, 113; *ibid.* (1798-1800) 176; *ibid.* (1801-02) 97; *ibid.* (1818) 436; *ibid.* (1819) 35; C. J. (1801) 259; *ibid.* (1812) 492 *ibid.* (1819) 64. See also Colchester, iii 37

chosen by lot (*m*), or where twenty-one members were chosen by lot, and each of two members named by the House were permitted to strike off four from that number, the thirteen remaining, with the two named by the House, to constitute the committee (*n*).

In the Commons a Member who is returned of record may be nominated to serve on a committee although he has not taken the oath (*o*).

In the nomination of Members to serve on select committees neither the House, nor, where the nomination is entrusted to the Committee of Selection, the Committee of Selection, is bound to consider whether members are personally interested in the matter or bill referred to the committee, and no objection can be raised in this respect to the composition of the committee. But it is not the practice for a member of a select committee to take part in any inquiry while the affairs of any body in which he may be personally interested are under investigation (*p*).

A member cannot relieve himself from his obligation as a Member to obey the commands of the House by declining to serve on a committee (*q*).

**Appointment of Members to serve on select committees with power to examine witnesses, but without power to vote.**—Where inquiries affecting the character or conduct of Members of the House, public officers, or other persons are referred to select committees, one of the Members on whose motion or suggestion the committee has been appointed, together with a Member nominated by, or in the confidence of, the person whose conduct is impugned, is sometimes appointed to serve on the committee, with power to examine witnesses, but without power to vote (*r*), or to serve on the committee and to take part in its proceedings, but without power to vote (*s*).

In some cases the appointment of these members has been delegated to the Committee of Selection (*t*). The functions of these members are to bring out the case of the parties interested on either side (*u*), and they examine and cross-examine the witnesses very much after the manner of opposing counsel in the trial of a cause in a court of justice.

**Lists of Members serving on Select Committees.**—By S.O. No. 56 of the House of Commons lists are to be affixed in some conspicuous place in the Committee Office and in the lobby of the House of all Members serving on each select committee.

**Addition of Members to, and discharge of Members from, Select Committees.**—A select committee may afterwards be enlarged

(*m*) C. J. (1833) 144, 467.

(*n*) C. J. (1833) 160, 475.

(*o*) C. J. (1714-18) 59; Chandler, Deb. vi, 19; Parl. Hist. vii, 58.

(*p*) See e.g. H. C. Deb. (1943-44) 395, c. 1402.

(*q*) Parl. Deb. (1838) 43, c. 1230 *et seq.*

(*r*) C. J. (1836) 42; *ibid.* (1854) 232; *ibid.* (1864) 281; *ibid.* (1865) 313; *ibid.* (1887) 108. In the last-mentioned case these Members had power to propose, as well as to examine, witnesses. In the case of the Committee on the Duchy of Lancaster (Bertolacci's Petition) only one Member was appointed, the person whose conduct was impugned declining to be represented, C. J. (1857) 228.

(*s*) C. J. (1857-58) 68.

(*t*) C. J. (1887) 108; cf. *ibid.* (1864) 281; *ibid.* (1865) 313.

(*u*) Parl. Deb. (1836) 31, c. 495; *ibid.* (1854) 133, c. 165; *ibid.* (1858) 148, c. 1867.



by the addition of other members appointed in the same manner as those originally nominated. In the Commons, members cannot be added so as to increase the number of the committee beyond fifteen or such other number as the House may have agreed upon, unless a motion that the committee shall consist of the larger number be first agreed to by the House (*a*). Such a motion requires notice.

Members originally nominated to serve on committees may be discharged from further attendance, and members may be added to committees in the room of members who have been so discharged, or have died or otherwise ceased to be Members of the House. A motion for the discharge of a member from further attendance on, or for the addition of a member to, a committee (whether in substitution for one of the original members or otherwise) requires notice (*b*).

Where it is desired to alter the composition of a committee, the members of which were originally nominated by the Committee of Selection, the House has discharged the member whom it is desired to replace and instructed the Committee of Selection to appoint another member to serve on the committee in his room (*c*); but in recent years the Committee of Selection has effected the desired changes without any instruction, C. J. (1938-39) 304.

**Reference of papers to Select Committees.**—Reports of previous committees, or the minutes of the evidence taken before them, and other papers which have been laid upon the table of the House are sometimes referred to committees (*d*).

Such a reference is usually intended to direct the particular attention of the committee to documents relating to the subject of their inquiry, or to explain or enlarge the original terms of reference.

Any member of the House can move to refer to a select committee any document within the scope of their inquiry (*e*). If a committee wishes to have recourse to documents in the custody of the officers of the other House, the House will, at the request of the committee, send a message to the other House requesting them to communicate a copy of the document. The document, when communicated, will be referred to the committee.

Petitions relating to the subject of inquiry are also sometimes referred to committees (*f*). It is the duty of the clerk attending the committee to lay any petitions so referred before the committee (*g*).

(*a*) C. J. (1857) 157; Parl. Deb. (1857) 145, c. 539.

(*b*) S.O. No. L. (H. L.); Parl. Deb. (1865) 178, c. 956, *ibid.* (1878) 239, c. 1192; H. C. Deb. (1917-18) 95, c. 202.

(*c*) C. J. (1852-53) 588; *ibid.* (1854) 101, 218.

(*d*) Report of a previous committee, C. J. (1918) 95; *ibid.* (1936-37) 100; evidence given before a previous committee, C. J. (1905) 211; report of, and evidence given before a previous committee, C. J. (1898) 288; proceedings of a former session, L. J. (1879) 48; report of a royal commission, C. J. (1890-91) 66; report of, and evidence given before a royal commission, C. J. (1877) 135; appendix to the evidence given before a royal commission, C. J. (1893-94) 408; minutes of evidence taken before a departmental committee, C. J. (1931-32) 276; returns, C. J. (1898) 288; papers presented to the House by command of His Majesty, C. J. (1935-36) 125; *ibid.* (1936-37) 173; reports of, and evidence given before a commissioner, C. J. (1898) 188.

(*e*) Parl. Deb. (1900) 82, cc. 1066-68.

(*f*) L. J. (1889) 62; *ibid.* (1904) 227; Votes, 1875, p. 130; *ibid.* (1875) p. 187; C. J. (1881) 293; *ibid.* (1888) 196.

(*g*) Parl. Deb. (1867) 189, c. 1047.

**Discharge of orders for the appointment of Select Committees.**—Orders for the appointment of select committees are occasionally discharged (*h*). When the order for the appointment of a committee is discharged, a committee with a different order of reference is sometimes appointed (*i*).

#### SCOPE OF DELIBERATIONS OR INQUIRIES : INSTRUCTIONS

A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference), and the deliberations or inquiries of the committee must be confined within the limits of the order of reference. But when a bill is committed, or referred, to a select committee, the bill is itself the order of reference, and the inquiries and deliberations of the committee must be confined to the bill and amendments relevant to the subject-matter thereof. If it is thought desirable that a committee should extend its inquiries beyond the limits laid down in the order of reference, the House may give the committee authority for that purpose by means of an instruction (*k*). Such an instruction may be either mandatory (*l*), or merely permissive (*m*).

The order of reference may also be enlarged in the case of a committee on a matter by the committal of a bill to the committee (*n*) and, in the case of a committee on a bill, by the committal of an additional bill to the committee (*o*), or by the reference of a paper to the committee (*p*).

If, on the other hand, it is deemed advisable to restrict the scope of the inquiry, or to limit the committee's powers, an instruction may be given to the committee requiring it to refrain from considering the matter (*q*), or doing the act (*r*) which forms the subject of the instruction ; and, if so

(*h*) C. J. (1837-38) 265 ; *ibid.* (1844) 300 ; *ibid.* (1854) 251 ; *ibid.* (1892) 223. For an instance of the discharge of the order for the committal of a bill to a select committee, see L. J. (1895) 86 ; C. J. (1895) 213 ; *ibid.* (1861-62) 400.

(*i*) C. J. (1852-53) 487 ; *ibid.* (1870) 169.

(*k*) The same result has been achieved in the House of Lords by an amendment made to the order of reference on a subsequent day, L. J. (1888) 367 ; *ibid.* (1907) 105. A select committee on a bill may be instructed to inquire into a matter also, L. J. (1906) 208 ; C. J. (1922) 258.

(*l*) L. J. (1884) 200 ; C. J. (1836) 215 ; *ibid.* (1873) 129 ; *ibid.* (1881) 89 ; *ibid.* (1882) 37 ; *ibid.* (1901) 209 ; *ibid.* (1914-16) 270 ; *ibid.* (1922) 258 ; *ibid.* (1936-37) 103.

(*m*) L. J. (1906) 208 ; C. J. (1880) 48, 190 ; *ibid.* (1881) 22, 76 ; *ibid.* (1882) 66 ; *ibid.* (1884) 386 ; *ibid.* (1902) 119.

(*n*) C. J. (1908) 239 ; *ibid.* (1909) 44, 179. For the committal of private bills and provisional order bills to a select committee on a matter, see C. J. (1867) 65 ; *ibid.* (1873) 176.

(*o*) L. J. (1896) 116 ; *ibid.* (1906) 83 ; *ibid.* (1932-33) 224 ; C. J. (1906) 83.

(*p*) Parl. Reg. xxii 258 ; Parl. Deb. (1876) 230, cc. 1679-80.

(*q*) C. J. (1819-20) 259 ; *ibid.* (1835) 522 ; *ibid.* (1864) 147. The same result may be achieved by an order discharging so much of the order appointing the committee as refers to a particular subject, C. J. (1833) 286, or discharging the committee from the further consideration of a portion of the matters referred to it, C. J. (1835) 504.

(*r*) C. J. (1844) 484.

desired, instructions may also be given to committees prescribing their course of proceeding (s).

Instructions may be given to committees at the time of their appointment, or at any time thereafter before they have presented their final report.

Where an instruction is proposed to be given to a committee on its appointment, it may be moved immediately after the committee has been appointed; but it is more convenient to move it after the members have been nominated, and the quorum has been fixed and the committee given power to send for persons, papers, and records.

Notice of an instruction can be placed upon the notice paper, to be moved after the appointment of a select committee, or after the nomination of the members, or as an independent motion.

For rules relating to instructions to committees on bills, see pp. 471, 508.

#### PROCEEDINGS IN SELECT COMMITTEES

Select committees are regarded as copies on a small scale of the House, limited in their inquiries by the extent of the authority given them, but governed for the most part in their proceedings by the same rules as those which prevail in the House by which they are appointed (t), and which continue in full operation in every select committee (u).

Where the rules of proceeding in a Committee of the whole House differ from those in the House, the former are generally followed in a select committee. Thus the previous question cannot be moved upon any question in a select committee (a). In certain respects, however, the practice in select committees differs as well from that of the House as from that which obtains in Committees of the whole House. Thus by S.O. No. XLVII of the House of Lords a member of a select committee speaks to the rest uncovered, but may sit if he pleases. In select committees of the Commons members may speak sitting, and, where the committee is sitting in private, may smoke (b). Other differences will be mentioned in subsequent paragraphs.

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(s) *E.g.* to make a special report upon certain matters, C. J. (1882) 98; to omit particular clauses from a bill, C. J. (1890) 194; to report, in the first place, the result of their inquiries into certain of the matters referred to their consideration, C. J. (1833) 144; to inquire, in the first place, into a particular portion of the matter referred to their consideration, and to report specially thereon, C. J. (1847) 24; to sit and proceed forthwith and to sit from day to day, C. J. (1868-69) 87; to take evidence on oath, C. J. (1887) 97; to consider the subject-matter of the bill to them committed and to report thereon, C. J. (1888) 211; to report only the evidence already taken (the committee not having completed its inquiry, and a dissolution of Parliament being imminent), C. J. (1837) 621; to inquire into and report upon a certain matter before going through the bill committed to the committee, C. J. (1904) 147; to hear petitioners praying to be heard by themselves, their counsel, or agents, C. J. (1867-68) 263. The same result may be achieved by an order differing from a mandatory instruction only in the omission therefrom of the words "that it be an instruction to the committee," C. J. (1798-99) 481, 482; *ibid.* (1867-68) 183; *ibid.* (1921) 241; *ibid.* (1932-33) 266; *ibid.* (1933-34) 12, *e.g.* an order to report forthwith the minutes of the evidence which it had taken, C. J. (1798-99) 481; to report from time to time the evidence taken, *ibid.* (1798-99) 482; to sit *de die in diem* notwithstanding any adjournment of the House, *ibid.* (1867-68) 183; to report any evidence taken by the committee or any sub-committee thereof, C. J. (1936-37) 20; to report the minutes of the proceedings on a particular day, C. J. (1940-41) 200.

(t) Parl. Deb. (1836) 32, c. 505.

(u) Parl. Deb. (1824) 11, c. 914.

(a) 2 Hatsell, 116; Parl. Deb. (1882) 274, cc. 1485, 1700-1.

(b) H. C. Deb. (1919) 116, c. 445.

**Chairman of a select committee.**—The chairman of a select committee is usually appointed by the committee itself.

By a sessional order of the Lords, the Chairman of Committees (whether named of the committee or not) is chairman of all committees of that House on private bills and other matters unless the House otherwise directs (c). By the Lords S.O. 112, the chairman of a select committee on an opposed local bill or an opposed provisional order bill is appointed by the Committee of Selection; and select committees on public bills and matters are usually given power to appoint their own chairman (d). In the Commons, the chairman of a select committee is chosen by the committee itself unless the House otherwise orders (e), but by S.O. 119 the chairman of a committee on opposed private bills is appointed by the Committee of Selection. (See p. 912.) For appointment of chairmen of sub-committees, see p. 601.

**Election of Chairman.**—Unless the power of appointing its chairman is withheld from a select committee, its first proceeding is to choose a chairman. The chairman is ordinarily called to the chair by the general voice of the members present, but if there is a difference of opinion as to who shall be called to the chair, the same procedure is followed as on the choice of a Speaker (see p. 268). A member who is not present may be chosen chairman (f).

**Absence of Chairman.**—If at any sitting the chairman is absent, or has to leave before the sitting is concluded, the members present choose one of their number, usually the senior member, to be chairman for that sitting, or the remainder thereof, as the case may be.

A select committee has resolved that, if the chairman should be absent at any meeting, a particular member should take the chair. When both the chairman and the member so named were absent, the ordinary procedure was followed. See H. C. 133, pp. 9 and 11 (1942-43).

**Resignation of Chairman.**—Another member is sometimes appointed chairman in place of the one first chosen, at the request of the latter, or otherwise (g).

In 1863 in the Select Committee on the Inland Revenue and Customs Establishments Mr. Horsfall, the chairman, proposed a draft report which was rejected by a majority of one. Mr. Cardwell then proposed a draft report embodying the opinions of the majority. At the next meeting of the committee Mr. Horsfall declined to take the chair, stating that he had resigned the chair, and proposed that Mr. Cardwell should take the chair. On this the clerk attending the committee objected that there was no one authorized to put the question. The committee decided to refer the matter to the Speaker for an opinion. The Speaker gave it as his opinion that the chairman, having been elected into the chair, and having accepted the post with a full knowledge of its duties and liabilities, ought to go through with the duties. Reasons of a personal nature, failing health, or a feeling that he

(c) L. J. (1934-35) 5; *ibid.* (1935-36) 14.

(d) L. J. (1932-33) 68, 113; *ibid.* (1933-34) 248; *ibid.* (1934-35) 67, 185.

(e) For instances where the House ordered that the chairman of a committee should be designated by the General Committee of Elections, see C. J. (1847-48) 555; *ibid.* (1852-53) 158, 518.

(f) e.g. H. C. 113, p. 9 (1941-42).

(g) Minutes of the Select Committees on Open Spaces (Metropolis), H. C. 178, p. iv (1865); Married Women's Property Bill, H. C. 210, p. iv (1868-69); Apothecaries Licences Bill, H. C. 310, p. v (1874); Butter Substitutes Bill, H. C. 208, p. vi (1887); Town Holdings, H. C. 260, pp. iv, v (1887).

was unequal to the task, might afford sufficient reasons for wishing to be released. But after having exercised all the power and influence which belonged to the chair, then to vacate it in order to have the privilege of giving a vote, and altering the balance of opinions, seemed to him (the Speaker) contrary to the spirit of parliamentary proceedings. Mr. Horsfall went back to the committee room and took the chair (*h*).

*Powers of Chairman.*—The chairman of a select committee has, and exercises, within the limited authority conferred on the committee, substantially the same duties and powers as the chairman of a Committee of the whole House. S.Os. Nos. 18, 22, 26 and 28 of the House of Commons, however, do not apply to proceedings in a select committee, and the chairman has consequently not the power of accepting a motion for the closure of a debate, the power to deal with dilatory motions, and with irrelevance and repetition in debate, or the power of selecting which new clauses or amendments shall be proposed, powers which are exercised by the Chairman of Ways and Means, and the Deputy Chairman in Committees of the whole House (see p. 453). By custom, however, a chairman has checked irrelevance or repetition, if supported by the sense of the committee. The chairman of a select committee may take part in the proceedings of the committee.

*Divisions in select committees.*—Questions are determined in select committees in the same manner as in the House to which they belong, except that when a "division" is taken, the names of the members are called over in alphabetical order by the clerk, and each member, as his name is called, answers, in Lords' committees, content or not content, or, in Commons' committees, aye or no, or states that he declines to vote. In Lords' committees the chairman has a vote, but not a casting vote, and if the numbers on a division are equal, the question is negatived in accordance with the ancient rule of the Lords "*Semper præsumitur pro negante*." In order to avoid the difficulty which might otherwise arise owing to this rule, it is the practice to put the question on an amendment in the form, "That the amendment be agreed to" (*i*).

In the Commons the practice in a select committee, not being a private bill committee, is similar to that observed in the House itself, that is, the chairman can only vote when there is an equality of voices (*j*). The doors of the committee room are deemed to be locked whilst a division is being taken, and a member's vote has been disallowed, as he was not in the room when the question was put (*k*). A member who had heard the question put could not formerly abstain from giving his vote, but in view of the change of practice in this respect in standing committees (see p. 621) this rule is not now enforced in select committees. A member who has voted by mistake may be allowed to correct the error (*l*).

In committees of either House, in the event of a division taking place, the question proposed, the name of the proposer, and the respective

(*h*) Denison, 145.

(*i*) Nationality of Married Women Bill, H. C. 115, p. xxiv (1923); Moneylenders Bill [Lords], H. C. 153, pp. xv, xx (1924-25); Indian Affairs, H. C. 17, p. viii (1926); Registration and Regulation of Osteopaths Bill, H. L. 130, p. xvii (1934-35).

(*j*) Parl. Deb. (1836) 32, cc. 501-4; C. J. (1836) 214.

(*k*) Railways (Rates and Fares) Committee, H. C. 317, p. lxiii (1882).

(*l*) *Ibid.*, p. 1.

votes thereon of each member must be entered on the minutes of the proceedings of the committee (*m*).

**Rescission of resolutions of select committees.**—It is a rule of the House of Commons that "every question by voice in committee bindeth, and cannot be altered by themselves" (*n*). In practice, this rule is sometimes disregarded, and resolutions or other decisions of committees are rescinded (*o*).

Previous notice must, however, be given to all the members of any motion for rescinding a resolution.

**Absence of quorum.**—A select committee cannot proceed to business unless a quorum is present, and, in the Commons, if, after a committee has proceeded to business, the number of members present should be reduced below the quorum, the clerk of the committee is to call the attention of the chairman to the fact, and the chairman must thereupon either suspend the proceedings till a quorum is present, or adjourn the committee to a future day (S.O. No. 60).

Where a committee is unable to proceed to business owing to the failure of a quorum to assemble, the chairman has sometimes taken it upon himself to adjourn the committee to a future day, but as the standing order, in terms, applies only to cases in which the quorum disappears after a committee has proceeded to business, it may be doubted whether he has power to do so unless the date of the next sitting has already been fixed. If it has not, the more regular course would be for the chairman to move the House to revive the committee (*p*).

In the Lords it is not usual to fix by express order the quorum of a select committee, though there are instances in which this has been done (*q*), but by usage three are a quorum of a select committee. In the Commons the quorum of a select committee is fixed by the House in reference to each particular case, and if no quorum has been fixed, the committee cannot transact business unless all the members are present.

The quorum of a select committee of the Commons is usually fixed at three when the committee consists of seven members or less; at five where the committee consists of more than eight and less than twenty-three members, but sometimes at three (*r*), four (*s*), or as high as nine (*t*); and at seven or nine when the committee consists of twenty-three members or more. Where the inquiry is of a quasi-judicial character the quorum is proportionately larger (*u*), or, if the inquiry is referred to a committee of five members, no quorum is fixed (*a*).

(*m*) Resolution of the Lords of 7 December, 1852, L. J. (1852-53) 44; S.O. No. 58 (H. C.).

(*n*) C. J. (1547-1628) 379 (1607).

(*o*) Minutes of Committees on Imprisonment for Debt, H. C. 348, p. vx (1873), Railways, H. C. 374, p. xvi (1881); Tuberculosis (Animals) Bill, H. C. 272, p. ix (1904)

(*p*) C. J. (1856) 298.

(*q*) L. J. (1877) 30; *ibid.* (1884-85) 118, 187. The quorum of a sessional committee is fixed by S.O. 92.

(*r*) C. J. (1923) 217 (committee of nine); C. J. (1931-32) 134, 144 (committee of eleven); *ibid.* (1930-31) 21, 52 (committee of fifteen).

(*s*) C. J. (1922) 250 (committee of nine).

(*t*) C. J. (1923) 128 (committee of nineteen).

(*u*) Committee of eleven, quorum seven, C. J. (1854-55) 87; of ten, quorum nine, C. J. (1854) 75; of nine, quorum seven, C. J. (1847-48) 555; of seven, quorum five, C. J. (1857-58) 68.

(*a*) C. J. (1852-53) 158, 428, 583; *ibid.* (1854) 182; *ibid.* (1857) 192; *ibid.* (1864) 281; *ibid.* (1865) 313; *ibid.* (1887) 108.

In cases of an inquiry of a quasi-judicial character the House sometimes fixes a quorum, but at the same time orders the committee to report the absence of any member on two consecutive days (*b*).

Late in the session the quorum of a committee is sometimes reduced (*c*). Where the quorum is prescribed by a standing order the order is suspended before the quorum is reduced (*d*). These motions require notice.

**Record of members' attendances.**—In the Lords pursuant to the resolution of 25 June 1852 (*e*), and in the Commons pursuant to S.O. No. 58 the names of the members present each day at the sitting of a select committee are entered on the minutes of the proceedings of the committee, which are reported to the House. When a committee has power to report from time to time, minutes of proceedings have been laid separately (*f*).

**Sittings and adjournment of select committees.** *Time of First Meeting.*—In the Lords the date and hour for the first meeting of a select committee are fixed by the House. When necessary the date of the meeting may be advanced (*g*), or the meeting may be put off to a later day (*h*). In the Commons the time of the first meeting of a committee is fixed by the senior member of the committee, that is, he who has been a member of the House for the longest period, irrespective of continuity of service (*i*).

*Sittings of Select Committees during the Sitting of the House.*—Formerly, without leave of the House, no committee of the Commons could sit whilst the House was sitting (*j*), but now, by S.O. No. 52, all committees have leave to sit during the sitting of the House, and notwithstanding any adjournment of the House, on any day on which the House has sat.

*Adjournment of Select Committee.*—A committee may adjourn from time to time (*k*).

A select committee ought to be regularly adjourned from one sitting till another, but the reassembling of the committee has sometimes been left to be afterwards arranged by the chairman, by whose direction the members are summoned for a future day; but this practice is not regular unless a committee have so ordered (*l*).

In 1871 complaint was made that, a day having been fixed for the next meeting of the committee by the chairman, he had subsequently, after consulting certain members of the committee, appointed an earlier day. The chairman stated that he had acted for the general convenience of the committee and in accordance with the desire of such members as he had been

(*b*) C. J. (1835) 457, 504 (committee of nine members); *ibid.* (1861) 305 (committee of seven members).

(*c*) C. J. (1894) 223; *ibid.* (1899) 364; *ibid.* (1919) 303.

(*d*) C. J. (1929-30) 400.

(*e*) L. J. (1852) 344.

(*f*) C. J. (1939-40) 255.

(*g*) L. J. (1928-29) 55.

(*h*) L. J. (1880) 54, 98.

(*i*) Mr. Speaker's private ruling, 13 December, 1934.

(*j*) C. J. (1693-97) 126, 494.

(*k*) The Lords sometimes expressly give committees power to adjourn as they please, L. J. (1932-33) 113, 168; *ibid.* (1933-34) 15, 248, 283; *ibid.* (1934-35) 73, 185. Such orders are vestigial only.

(*l*) e.g. H. C. 125, p. 4 (1943-44).

able to consult ; and Mr. Speaker expressed the opinion that in these circumstances the proceeding was not irregular (*m*).

If, for any reason, it is necessary further to adjourn a committee beyond the date fixed for its next meeting, the House, on the application of the chairman, will make the necessary order (*n*).

If a committee, without proceeding with or completing the business referred to its consideration, adjourns *sine die*, or for some very protracted period, or to a day when it is notorious the House will not be sitting, with a view to disposing of such business, the House may direct the committee to re-assemble and proceed with the business (*o*).

*Sittings during the Adjournment of the House.*—A select committee of the Lords may sit during the adjournment of the House without obtaining the leave of the House, but it is otherwise in the Commons.

If, therefore, an adjournment of the House of Commons over a day on which it ordinarily sits, or several such days, takes place suddenly, and without any order being made in reference to the sittings of committees in the meantime, all committees which stand adjourned to any time during the interval will be without day and cannot sit until revived by order of the House (*p*). When the House has resolved that it will, at its rising, adjourn over the following day, an order is frequently made, "That all committees have leave to sit to-morrow notwithstanding the adjournment of the House" (*q*).

Leave to sit on a particular day on which the House is not sitting is granted to select committees as a matter of course (*r*), and leave to sit notwithstanding any adjournment of the House for the remainder of the session, or for some specified period, is sometimes given to particular committees (*s*), or to all committees (*t*).

In session 1914-16, when it was proposed that the House should not sit on Fridays, leave was given to all committees to sit on that day (*u*), and in the three succeeding sessions similar leave was given and extended to Mondays, if the House adjourned from Thursday or Friday till Tuesday (*a*).

Power to sit notwithstanding any adjournment of the House is now frequently given on the appointment of a committee (*b*).

*Sittings beyond the Precincts of the House.*—A select committee usually sits in one of the committee rooms of the House by which it is appointed, arrangements being made by the officers of the respective Houses for accommodating particular committees in different rooms. Occasionally, however, a committee finds it convenient to hold a sitting outside the precincts of the House, as where there is occasion to examine records or other things which cannot conveniently be removed, or where a member

(*m*) Parl. Deb. (1871) 205, cc. 685-89.

(*n*) C. J. (1934-35) 48.

(*o*) Parl. Deb. (1824) 11, c. 8 *et seq.*

(*p*) C. J. (1817) 201.

(*q*) C. J. (1818) 218 ; *ibid.* (1819) 500, etc.

(*r*) C. J. (1896) 425 ; *ibid.* (1898) 414.

(*s*) C. J. (1914-16) 22, 132, 189 ; *ibid.* (1917-18) 197 ; *ibid.* (1918) 208 ; *ibid.* (1919) 177, 303 ; *ibid.* (1920) 350 ; *ibid.* (1921) 229 ; *ibid.* (1922) 35, 315 ; *ibid.* (1923) 26, etc.

(*t*) For the remainder of the session, C. J. (1892) 390 ; *ibid.* (1895) 304 ; during a specified period, *ibid.* (1908) 142 ; *ibid.* (1910) 153 ; *ibid.* (1914-16) 87.

(*u*) C. J. (1914-16) 40.

(*a*) C. J. (1916) 13 ; *ibid.* (1917-18) 11 ; *ibid.* (1918) 6.

(*b*) C. J. (1939-40) 17 ; *ibid.* (1943-44) 135, 136, etc.



of the committee is sick, or a witness unable to move from home. In such cases, unless the committee has been previously authorized to adjourn from place to place (c), it must obtain the leave of the House for that purpose (d).

A committee has also been given power to travel to and hold sittings in a particular place (e).

#### WITNESSES

**Modes of obtaining or compelling the attendance of witnesses or the production of documents.** *Generally.*—A select committee cannot require the attendance of witnesses or the production of documents without express authority from the House.

When the object, or one of the objects, of a select committee has been the investigation of facts, committees have, without any express authority for that purpose, examined all witnesses who voluntarily appeared before them, and all papers laid before them by such witnesses or by members of the committee, and all records to which they could obtain access in the prosecution of their inquiries (f). Other committees, however, have regarded their powers of inquiry as restricted to the powers specifically given by the House on their appointment (g).

The Lords do not give select committees authority to require the attendance of witnesses or the production of papers (h), but where necessary an order for the attendance of a witness (i), or the production of documents will be made by the House on the application of the chairman of the committee.

In the Commons, however, it is usual, either at the time of its appointment, or subsequently on the motion of the chairman (j), to give select committees power to send for persons, papers, and records (k).

By virtue of this authority witnesses may be summoned, by an order signed by the chairman, to attend the committee and to bring with them all such documents as they are informed will be required for the use of the committee. If a witness fails to appear, when summoned in this manner, his conduct is reported to the House, which usually orders the offender to attend at its bar (l). If in the meantime the witness appears

(c) C. J. (1939-40) 17, etc.

(d) C. J. (1864) 255; *ibid.* (1881) 336; *ibid.* (1914-16) 22.

(e) C. J. (1928) 203; see also *ibid.* (1834) 69; *ibid.* (1835) 39.

(f) e.g. Select Committee on Fisheries (Ireland) 1849, H. C. 536 (1849); and on the Civil List, 1910 and 1936, H. C. 211 (1910); H. C. 74 (1935-36).

(g) See e.g. Select Committee on Civil List, H. C. 22, p. 4 (1837-38).

(h) Parl. Deb. (1818) 37, cc. 124, 125, 126.

(i) L. J. (1883) 114

(j) C. J. (1894) 236.

(k) The Committee on Fisheries (Ireland) was given power to send for papers and records only, C. J. (1849). The object of this arrangement was to avoid the payment of the expenses of witnesses. The Committee on the Boundaries of Boroughs was given leave only to receive and call for maps, memorials, reports, papers and records concerning the boroughs in question, and to confer with the Boundary Commissioners and those employed under them in their inquiries, and with the Members for the counties and boroughs affected, C. J. (1867-68) 183.

(l) A witness who has been reported to the House by a committee for his failure to attend has been merely ordered to attend the committee, C. J. (1920) 263. But as obedience is as much due to the summons of a committee which has been invested with power to send for persons, papers and records as to the order of the House, a person who fails to obey such a summons is guilty of contempt, and the more regular course would, therefore, seem to be to order him to attend at the bar.

before the committee, the order for his attendance is usually discharged (*m*); but if he still neglects to appear, he will be dealt with as in other cases of disobedience to the order of the House (see p. 111).

*Witnesses from Overseas.*—Witnesses are not summoned from India, the dominions or the colonies, but application is made to the Secretary of State or the responsible Minister to secure their attendance or to obtain answers to written questions (*n*). Application has, on occasion, been made by select committees to the Secretary of State for Foreign Affairs to obtain information as to the regulations, practice, etc., of foreign countries in matters corresponding to those within the terms of the committee's reference (*o*).

*Witnesses in Custody.*—If a person whose attendance is required as a witness should be in the custody of the keeper of any prison, or of a sheriff, the House will direct the Speaker to issue his warrant to the keeper of the prison or to the sheriff requiring him to bring the prisoner in safe custody to the committee to be examined (*p*). The keeper of the prison may be required either to bring the prisoner up on a day named, or from day to day, or as often as the committee may require. Where a person whose testimony is desired by a committee is in the custody of the Serjeant at Arms, the House, on the request of the committee, will order the Serjeant to bring him in custody to the committee from time to time, as often as may be required by the committee (*q*).

When a person whose attendance is desired by a committee of one House is in custody by order of the other, the practice is for the former House, by message, to request the latter that he may be from time to time produced before the committee, when desired, in order to be examined as a witness, and for the latter House to direct its officer to attend the committee, with the person in his custody, in such manner as is desired by the former House (*r*).

*Members of the House.*—If the attendance of a Member is desired as a witness before a select committee, the chairman writes to him and requests him to attend. If he refuses to attend, the committee must not summon him to attend, but merely inform the House of his refusal (*s*). The House may then, if it thinks proper, make an order for the attendance of the Member before the committee (*t*).

There has been no instance of a Member persisting in a refusal to give evidence, but in 1731 Sir Archibald Grant, a Member, was committed to the custody of the Serjeant at Arms "in order to his forthcoming to abide the orders of the House," and was afterwards ordered to be brought before a committee, from time to time, in the custody of the Serjeant (*u*). On 28 June

(*m*) C. J. (1836) 352.

(*n*) Army (India and the Colonies) Committee, 1867, etc.

(*o*) Betting Duty Committee, H. C. 139, p. 627 (1923); Capital Punishment Committee, H. C. 15, pp. 576-615 (1930-31); Parliamentary Elections (Mr. Speaker's Seat) H. C. 98, p. 47 (1938-39) *cf.* H. C. 170, p. xxviii (1922).

(*p*) C. J. (1902) 318; H. C. 164, p. x-xi (1939-40). A motion has also been moved in the House by the Chairman of the Committee for this purpose, C. J. (1940-41) 9; H. C. 5, p. xvi (1940-41).

(*q*) C. J. (1809) 55, 60, 71, 72; *ibid.* (1847-48) 258.

(*r*) C. J. (1718-21) 461, 462; *ibid.* (1727-32) 356, 926.

(*s*) Resolution of the House, March 16, 1688, C. J. (1688-93) 51.

(*t*) C. J. (1718-21) 403.

(*u*) C. J. (1727-32) 851, 852.

1842, a committee reported that a Member had declined to comply with their request for his attendance. A motion was made for ordering him to attend the committee and give evidence; but, the Member having at last expressed his willingness to attend, the motion was withdrawn (a).

When a Member submits himself to examination without any order of the House, he is to be treated precisely like any other witness, and is not at liberty to qualify his submission by stipulating that he is to answer only such questions as he pleases.

*Members of the Other House.*—If the attendance of a Peer is desired to give evidence before a committee of the House of Commons, the House sends a message to the Lords to request their lordships to give leave to the Peer in question to attend in order to his being examined before the committee. If the Peer is in his place when this message is received, and he consents, leave is immediately given for him to be examined, if he thinks fit. If he is not present, a message is returned on a later day, when the Peer has, in his place, consented to go. Exactly the same form is observed by the Lords when they desire the attendance of a Member of the House of Commons, to be examined before a committee (b).

Whenever the attendance of a member of the other House is desired by a committee, it is advisable to give him private intimation, and to learn that he is willing to attend, before a message is sent to request his attendance. But these formalities, though occasionally adopted (c), are not usual or necessary in the case of private bills, where the attendance of members of either House as witnesses is voluntary (d). If a Member should be in the custody of the Serjeant at Arms when leave is given him to attend the House of Lords, the Serjeant is ordered to permit him to attend in his custody (e).

*Peers under Accusation.*—In 1805 the Commons, having sent a message to the Lords desiring the attendance of Viscount Melville to be examined before the Committee of Naval Inquiry. The Lords acquainted them, at a conference, that the course adopted by the Lords "has been to permit their members, on their own request, to defend themselves in the House of Commons on points on which the Commons have not previously passed criminating resolutions against them, and to give evidence before the House, or any committee thereof, on those points only on which no matter of accusation is depending against them"; and within these limitations they gave leave to Lord Melville to attend, though the Commons did not think fit to examine him (f).

Whether the attendance of a Peer who is not a lord of Parliament may be required by the Commons, and, if necessary, enforced by their own authority,

(a) C. J. (1842) 438, 453, 458; see also Report of Precedents, *ibid.* 449; H. C. 392 (1842).

(b) If, however, the Lords are sitting as a court of criminal judicature on the trial of a Peer, they order the attendance of a Member of the House of Commons without a message, 3 Hatsell, 21, *n.*

(c) Liverpool Docks Bill (Lord Harrowby), C. J. (1847-48) 438; Salford Borough Bill, C. J. (1852-53) 434; Thames Embankment Approaches Bill, C. J. (1873) 178 (in which case the attendance of the Duke of Northumberland was desired by the committee itself, and not by the parties); South Eastern and London, Chatham and Dover Railways Bill, C. J. (1909) 299.

(d) 3 Hatsell, 21, *n.*

(e) C. J. (1693-97) 295, 305; *ibid.* (1795-08) 376, *ibid.* (1846) 603.

(f) C. J. (1805) 265, 272; Colchester, 1, 558; and see 4 Hatsell, 485. By S.O. No. LXIV "No lord shall either go down to the House of Commons, or send his answer in writing, or appear by counsel, to answer any accusation there, upon penalty of being committed to the custody of Black Rod, or to the Tower, during the pleasure of this House."

is a matter upon which the Houses have not agreed. The Commons have on two occasions ordered such Peers to attend (*g*), and they have attended accordingly. On the second occasion, however, the Lords took exception to the mode of summons, and (after a conference between the two Houses at which the Commons maintained that the right to decline, if they thought fit, to attend the House of Commons for the purpose of giving information upon inquiries instituted by that House was confined to Peers who had seats in the House of Lords) resolved that it was the privilege of all Peers, except such as had waived their privilege by becoming members of the House of Commons that the House of Commons had no right to enforce the attendance of Peers, whether lords of Parliament or not; and that it was the duty of the House of Lords to maintain and uphold the privilege of all such Peers, and to protect them against any attempt to enforce their attendance on the House of Commons contrary to such privilege (*h*). This resolution was, however, not communicated to the Commons.

*Officers of the other House.*—When the attendance of any of the officers of either House is desired in the other in order that they may be examined as witnesses before committees, the same ceremony is maintained between the two Houses as where members of the one are requested to attend in the other as witnesses; but when leave is given to them to attend, the words “if they think fit,” which are used in the case of Members, are omitted in the answer (*i*).

*Examination of witnesses.*—In select committees of the Lords, witnesses are placed in a witness-box or at the shorthand writer’s table, to be examined; but members of the House of Commons are allowed a seat near the table, where they sit uncovered. When a Peer is examined before a select committee of the Commons, it is the practice to offer him a chair at the table, next to the chairman, where he may sit and answer his questions covered.

A question put to a witness may be objected to by a Member. Questions are usually objected to for much the same reasons as those offered by parties or their counsel in a court of law, but Members are not confined to objections of this description. A witness who is unwilling to answer a question, after stating why he desires to be excused from answering, may appeal to the chair whether in the circumstances, or for the reason stated by him, he ought to answer.

A witness is, however, bound to answer all questions which the committee see fit to put to him, and cannot excuse himself, for example, on the ground that he may thereby subject himself to a civil action (*j*), or because he has taken an oath not to disclose the matter about which he is required to testify (*k*), or because the matter was a privileged communication to him, as where a solicitor is called upon to disclose the secrets of his client (*l*), or on the ground that he is advised by counsel that he cannot do so without incurring the risk of criminating himself or exposing himself to a civil suit (*m*), or that it would

(*g*) Earl of Balcarras, C. J. (1778–80) 366; Lord Teignmouth, C. J. (1806) 374.

(*h*) L. J. (1805–6) 678, 699, 710, 733, 744, 779, 789, 805, 807, 812, C. J. (1806) 465, 489, 503, 511, 525, 536; 2 Hatsell, App. 9.

(*i*) C. J. (1847–48) 658; *ibid.* (1857) 61; *ibid.* (1857–58) 255; *ibid.* (1932–33) 54.

(*j*) Parliamentary Oath (Mr. Bradlaugh) Committee, H. C. 226, p. vi (1880).

(*k*) Parl. Deb. (1823) 9, cc. 113, 119, 120, 493.

(*l*) Parl. Deb. (1828) 18, cc. 968 *et seq.*

(*m*) Parl. Deb. (1806) 6, cc. 353–59.

prejudice him as defendant in litigation which is pending (*n*), some of which would be sufficient grounds of excuse in a court of law. Nor can a witness refuse to produce documents in his possession on the ground that, though in his possession, they are under the control of a client who has given him instructions not to disclose them without his express authority (*o*).

Officials giving evidence on behalf of a Department have been excused from answering when the matter of a question is not within their competence.

If a question should be objected to, or if any difference should arise in regard to the examination of a witness, he is directed by the chairman to withdraw, and the committee proceeds to consider the matter. When the committee has come to a decision the witness is again called in, and the examination proceeds.

When parties are allowed to call witnesses, the examination of such witnesses is mainly conducted by the parties themselves or their counsel, and objections are taken and argued before the committee in the same manner, as in a court of law; but members of the committee may also participate in the examination, and object to questions in the same manner as when the inquiry is conducted exclusively by them. When any question arises in regard to the examination, the parties, counsel and witnesses are directed to withdraw. It is disorderly for either a member or counsel to interrupt a witness whilst he is answering a question that has been regularly put to him (*p*).

*Power of select committees to administer oaths to witnesses.*—By the Parliamentary Witnesses Act, 1858, a committee of the House of Lords, and by the Parliamentary Witnesses Oaths Act, 1871, a committee of the House of Commons, may administer an oath to any witness examined before it. In practice, however, the power of examining witnesses on oath is only exercised by Lords' committees by the direction, or with the express leave, of the House (*q*) pursuant to the resolution of 11 June, 1857, "that select committees, in future, shall examine witnesses without their having been previously sworn, except in cases in which it may be otherwise ordered by the House" (*r*). In the Commons it is not usual for select committees to examine witnesses upon oath except upon inquiries of a judicial or other special character (*s*).

(*n*) Loans to Foreign States Committee, H. C. 367, p. liii (1875).

(*o*) British South Africa Committee, H. C. 311, p. 473 (1897).

(*p*) Parl. Hist. xxiv. 864.

(*q*) Sweating System, L. J. (1889) 19; Women's Royal Air Force, *ibid.* (1919) 382; Registration and Regulation of Osteopaths Bill, *ibid.* (1934-35) 32.

(*r*) L. J. (1857) 60.

(*s*) Loans to Foreign States, 1875; Public Petitions, 1878 (during its inquiry into the alleged forgery of signatures to certain petitions) Mr. Goffin's Certificate, 1879; Privilege (Tower High Level Bridge Metropolis), 1879; Contagious Diseases Acts, 1882 (during a particular branch of the inquiry); East India (Hyderabad Deccan Mining Company), 1888; Friendly Societies, 1888; London Corporation (Charges of Malversation), 1888 (pursuant to an instruction from the House, C. J. (1888) 97); Privilege (Service of a Writ on a Member in the Outer Lobby), 1888; Irish Society and London Companies (Irish Estates), 1890; Shop Hours Bill, 1892; British South Africa, 1897; Royal National Lifeboat Institution, 1897; Cottage Homes Bill, 1899 (while inquiring into the manner in which the terms of a draft report submitted to them had been divulged to a newspaper); War Office Contracts, 1900; Marconi's Wireless, etc., Agreement, 1912-13; Putumayo, 1912-13; Navy and Army Canteens, 1923; Conduct of a Member, 1940-41.

If a witness objects to taking the oath, he may affirm. The oath or affirmation, as the case may be, is administered to witnesses by the chairman, or by the clerk attending the committee (S.O. No. 86).

**Misbehaviour of witnesses.**—If a witness refuses to answer a question properly put to him, or to produce a paper which he has been directed to produce, the matter is usually reported to the House. In such cases the House has ordered the recalcitrant witness to attend at the bar, where he has been admonished by the Speaker as to the necessity of answering such questions as may be put to him by the committee (*t*).

Similarly, witnesses who give false evidence (*u*), or prevaricate (*a*) or present forged or falsified documents to a committee with intent to deceive the committee (*b*), or attempt in any other way to deceive a committee, or are guilty of disrespectful conduct to the committee or any member thereof, as, for example, by appearing before the committee in a state of intoxication (*c*) are reported to the House to be dealt with as may be determined.

By section 1 of the Perjury Act, 1911, where evidence is given upon oath, the giving of false evidence is punishable as perjury. The power of either House to punish for false evidence is not, however, superseded by this Act, and it may, therefore, imprison witnesses, as in any other case, upon its own authority; and if it appears that a conviction at law can also be obtained, it is competent to the House to direct the Attorney-General to prosecute the offending witnesses for perjury (*d*). Where evidence is not given upon oath, the giving of false evidence is punishable only as a contempt.

Persons who tamper with witnesses in respect of evidence to be given before committees of either House, or endeavour, directly or indirectly, to deter or hinder persons from appearing or giving evidence, are punishable as for breach of privilege (see pp. 57, 129).

**Limitations on the power of select committees to send for papers.**—A select committee has no power to send for any papers which, if required by the House itself, would be sought by address (see p. 253). In such cases the chairman may either move an address in the House, or communicate with the Secretary of State to whose department the papers relate, who will lay them before Parliament, if he thinks proper, by command of His Majesty. The papers, when received, will be referred to the committee by the House. Nor can a committee require an officer of a public department to produce any paper which, according to the rules and practice of the House, it is not usual for the House itself to order to be laid before it. (See p. 256.)

In the Committee on the Thames Embankment, objections were raised to the production of a case laid before the law officers of the Crown, on the ground that such a document was not usually required to be produced by the House itself (see p. 434); but, when it appeared that the opinion formed upon the case had already been presented, the production of the case upon

(*t*) C. J. (1833) 212, 218; *ibid.* (1897) 361, 365.

(*u*) C. J. (1860) 230.

(*a*) C. J. (1837) 601.

(*b*) C. J. (1889) 311.

(*c*) C. J. (1852-53) 389.

(*d*) C. J. (1860) 258; *ibid.* (1866) 239.

which that opinion was founded could not be resisted, and it was presented to the Committee (e).

**Privilege of witnesses.**—Persons whose testimony is required before a committee of either House are entitled to freedom from arrest save on a criminal charge *eundo, morando et redeundo*; and if such a person is arrested either in coming, while attending, or in returning, the House will not only take measures for the discharge of the witness from custody, but at the same time, if it should judge proper, punish the persons making or concerned in the arrest, as for contempt (see p. 128).

**Protection of witnesses.**—While witnesses before a committee cannot excuse themselves from answering any questions that may be put to them even on what would be sufficient grounds of excuse in a court of justice, the House will protect them against the consequences which might otherwise result from their testimony (f); and, pursuant to the resolution of the Commons of 26 May 1818, no member, clerk or officer of the House, or shorthand writer employed to take minutes of the evidence given before a committee of the House may give evidence elsewhere of any proceedings or examination without the special leave of the House.

Any molestation of, or threats or legal proceedings against, persons who have given evidence before committees of either House, on account or by reason of their attendance or testimony as witnesses, will be treated by that House as a breach of its privileges. Moreover, under the Witnesses (Public Inquiries) Protection Act, 1892, persons who threaten or in any way punish, damnify or injure witnesses before committees of either House of Parliament on account of their evidence may, unless such evidence was given in bad faith, be convicted of a misdemeanour, fined, imprisoned and condemned to pay the costs of the prosecution, as well as a sum by way of compensation to the injured persons. The Act applies whether the evidence is or is not given on oath (s. 1). An action of slander will not lie for statements made in evidence before a committee of the House of Commons (g).

**Leave for production in a Court of Law of evidence given before a committee.**—For the procedure to be followed when parties to a suit desire to produce evidence taken before a committee of the House, see p. 638.

**Witnesses' expenses.**—When a witness is summoned at the instance of a party, his expenses are defrayed by such party; but when summoned for any public inquiry, to be examined by a committee, his expenses are paid by the Paymaster-General under orders signed by the chairman of the committee.

A witness is allowed his actual travelling expenses, and for every day or part of a day that he is necessarily kept from home, at the following rates, viz. a barrister, physician, civil engineer or architect, £3 3s.; a general medical practitioner, solicitor or land surveyor, £2 2s.; a clergyman, non-professional gentleman or pilot, £1 1s.; a tradesman or clerk, 15s.; mechanic, etc., 10s. Special allowances have also been made to defray the expenses of official substitutes.

(e) Minutes of the Committee, H. C. 411, pp. iv, v, vi (1871).

(f) See resolution of the Commons, 26 May 1818, "That all witnesses examined before this House or any committee thereof are entitled to the protection of the House in respect of anything that may be said by them in their evidence," C. J. (1818) 389.

(g) *Goffin v. Donelly*, 6 Q. B. D. 307, 50 L. J. Q. B. 303.

No witness residing in or near London is allowed any expenses, unless he has rendered special services to the committee (*h*).

Artisans, mechanics and other persons of the poorer classes residing in or near London have been paid, however, the equivalent of the wages or earnings necessarily lost by them by their attendance as witnesses (*i*). Every witness should report himself to the committee clerk on his arrival in London, or he will not be allowed his expenses for subsistence prior to the day of making such report. Particulars regarding the payments to witnesses are included in the sessional return relating to the committee before whom the witnesses gave evidence.

On one occasion the Lords appointed a select committee to inquire into the expenses that should be allowed to witnesses, and received their report in detail before the items were agreed to (*j*).

In special cases the Treasury has sanctioned the payment of subsistence allowances, to witnesses from overseas or abroad who have been invited to give evidence before select committees, and sometimes the payment of their travelling expenses also (*k*). The Committee on East India Finance resolved that the expenses of witnesses coming from India (not exceeding £10,000) should be paid out of the revenue of the United Kingdom, but the Treasury declined to act on this resolution (*l*). The Treasury, on application from the Committee on British and Foreign Spirits, sanctioned a payment of £105 to two witnesses for work done for the committee, and in 1902 special allowances for experiments in connection with the ventilation of the House of Commons for the select committee on that subject (*m*).

Upon a special report from the Committee on the Army and Navy Estimates, and with the sanction of the royal recommendation, a grant was made to provide for the remuneration of accountants who might be employed, on behalf of the committee, to examine and audit the expense accounts of the army and navy manufacturing departments (*n*).

**Minutes of evidence.**—The evidence of the witnesses examined before a select committee is taken down in shorthand, and normally printed, for the use of the members of the committee, in daily parts. In the Lords the printing is authorised in each case by an order of the House, but in the Commons the evidence taken before select committees is printed according to long-established usage (*o*).

In the Lords pursuant to the resolution of 25 June 1852 (*p*), and in the Commons by S.Os. Nos. 57 and 59, the names of the members present at the sitting must be entered on the minutes of the evidence, and to every question, or series of questions, there must be prefixed the name of the member putting such question or questions.

If a question, which, on being objected to, is decided to be improper or inadmissible, has already been inserted in the minutes, the question is expunged. Answers which, properly speaking, are not evidence and ought not to have been received as such ; or part of, or certain words in, a witness's

(*h*) H. C. 555 (1840).

(*i*) Committee on Government Contracts (Fair Wages Resolution) Report, H. C. 93, p. xxv (1897).

(*j*) L. J. (1830) 910.

(*k*) Committees on British South Africa, 1897; Training and Employment of Disabled Ex-Service Men, 1922; Capital Punishment, 1929-30.

(*l*) 2nd Rep., H. C. 194, pp. 4, 6-9 (1873).

(*m*) H. C. 227, p. vii (1903).

(*n*) H. C. 239 (1887); C. J. (1887) 162, 271, 407; *ibid.* (1888) 95, 96.

(*o*) Parl. Deb. (1837) 38, c. 196.

(*p*) L. J. (1852) 344.



evidence ; or the questions addressed to a witness and the answers which he had given with reference to a case of the facts of which he subsequently admitted he had no personal knowledge ; or even the whole of the evidence given by a witness ; all these have been expunged by the order of the committee (q).

*Correction of evidence.*—A printed copy of his examination is sent to each witness for his revision, with an instruction that he can only make verbal corrections ; as corrections in substance must be effected by re-examination ; nor is a witness permitted to see the original manuscript notes of his evidence. Alterations should be confined to the correction of inaccuracies, or the necessary explanation of any answer, and are required to be in the hand-writing of the witness himself, unless he is disabled by accident or infirmity, in which case they may be written by another person at his dictation. The corrected copy should be returned without delay to the committee clerk, who is to examine the corrections and, if any appear to be irregular, he is to submit them to the chairman. If the evidence be not returned with corrections in six days, or some other reasonable time, according to the circumstances, it is printed in its original form (r).

Where evidence has been taken upon oath, its correction should be restrained within very narrow limits.

Where it appeared that a witness had corrected his evidence more extensively than the rules of the House permitted, and that his corrections had consequently not been reported by the committee, the report together with the minutes of the evidence taken before the committee, was re-committed to the committee with an instruction to re-examine the witness " touching his former evidence " (s).

A committee of the Lords has reported that the alterations made by some of the witnesses were so unusual, that they had ordered the alterations and corrections to be marked and printed in the margin (t).

*Publication of evidence taken before select committees before it is reported to the House.*—By the custom of Parliament no act done at any committee of either House should be divulged before the same be reported to the House (u). It is, consequently, a breach of privilege for any person to publish any portion of the evidence given before, or any document presented to, a select committee before such evidence or document has been reported to the House (a) (see Ch. VIII, p. 118), though when witnesses are examined in public no objection is usually taken to the publication by newspapers of reports of their examination provided such reports are fair and accurate (b).

(q) Proceedings of the Committees on East India Finance, H. C. 363, p. xiii (1871) ; Railway Servants (Hours of Labour) H. C. 342, pp. v, vi (1890-91) ; Game Laws, H. C. 337, p. ix (1872) ; and Cattle Plague and Importation of Live Stock, H. C. 362, p. xvii (1877).

(r) Instructions by Mr. Speaker, April 16, 1861, and see Parl. Deb. (1867) 189, c. 1223.

(s) C. J. (1849) 525.

(t) Railway Acts, 1st Report, L. J. (1849) 107.

(u) Clarendon (1826 ed.) II, 159. It is out of order to refer to evidence in debate in the House until the Report has been laid, H. C. Deb. (1940-41) 373, c. 1325.

(a) C. J. (1837) 282 ; *ibid.* (1875) 141. See also Parl. Deb. (1894) 28, c. 1257.

(b) Publications and Debates Reports Committee ; Report, H. C. 160, pp. v, 39, 40, 43 (1936-37).

In the Lords the order authorising the printing of the evidence in terms restricts the delivery of copies of the evidence to the members of the committee and to such persons, not being members of the committee, as the committee thinks fit, or in some cases to the members of the committee only (*c*). In the Commons, the evidence being printed solely for the use of the members of the committee, neither they nor witnesses to whom copies are entrusted for correction are at liberty to make any public use of them (*d*), or of any documents presented to the committee (*e*).

But committees have exercised a certain discretion in disclosing confidentially in certain circumstances minutes of evidence and other documents laid before a committee which have not been reported to the House. Broadly speaking, the kinds of confidential disclosure which have been made are those which were of advantage to the conduct of the inquiry without discourtesy to the House or injury to any witness, and without departing from the general rules of the House prohibiting publication before a report has been made (see above, p. 609).

A frequent type of confidential disclosure for the convenience of a committee's inquiry is disclosure to a witness of the evidence given by another witness, when no question of secrecy or of unfairness to a witness, in the committee's opinion, can arise.

But if a committee desires that the evidence should be available to later witnesses generally, or to parties interested in the subject of inquiry, the committee must apply to the House for leave to report the minutes of the evidence from time to time.

Where parties are admitted to be heard by counsel, leave has been given to such parties to print the evidence from the committee clerk's copy from day to day (*f*).

**Charges made against members in committees.**—On the 16th of March, 1688, the Commons resolved, "That if any information came before any committee that chargeth any member of the House, the committee ought only to direct that the House be acquainted with the matter of such information, without proceeding further thereupon" (*g*).

Where a committee reported that a member was mentioned to be concerned in the matters directed by the House to be inquired into, the House ordered, "That the said committee have power to inquire into the matters to them referred, notwithstanding any members of this House may be concerned therein; and that they do report the same to the House" (*h*).

**Documents presented to select committees.**—No document received by the clerk of any select committee of the House of Commons may be withdrawn or altered without the knowledge and approval of the committee (S.O. No. 56A).

#### ADMISSION OF STRANGERS

By S.O. No. XLIX of the House of Lords "no man is to enter at any committee (unless it be such as are commanded to attend), but such as

(*c*) L. J. (1883) 177; *ibid.* (1884-85) 393.

(*d*) Parl. Deb. (1837) 38, c. 196.

(*e*) Parl. Deb. (1833) 20, c. 408.

(*f*) C. J. (1880) 209; *ibid.* (1900) 188.

(*g*) C. J. (1688-93) 51.

(*h*) C. J. (1688-93) 647 (1691).

are members of the House, or the heir apparent of a lord who has a right to succeed such lord, or the eldest son of a peer who has a right to sit and vote in the House." This order is, however, not strictly enforced, strangers being generally allowed to be present whilst evidence is being taken. By S.O. No. XLVII no man except the lords shall be covered in the room in which a select committee is sitting.

In select committees of the Commons, also, the presence of strangers is generally permitted during the examination of witnesses. Their exclusion may, however, be ordered at any time and continued as long as the committee think fit.

When committees are deliberating, it is the invariable practice in both Houses to exclude all strangers, and any member of a select committee has a right to have the room cleared if he wishes to take the opinion of the Committee upon any matter which arises in the course of the proceedings (*i*).

**Presence of members at sittings of select committees.**—Members of the House by which a select committee is appointed stand upon a different footing. Any member of the House of Lords is entitled, though not of the committee, to attend a select committee of that House, and may speak, though he is not allowed to vote, and is bound to give place to all that are of the committee, though of lower degree, and to observe the same order for sitting as at a conference with the Commons (S.O. No. XLVIII (H.L.)). This privilege does not, however, extend to a secret committee.

Members of the House of Commons are likewise entitled to be present at the sittings of committees of their House, as well during the deliberations of the Committee as while witnesses are being examined; and though, if requested to retire, they rarely make any objection, and ought, on the grounds of established usage and courtesy to the committee, immediately to retire when the committee is about to deliberate, the committee, in case of their refusal, has no power to order them to withdraw (*j*). As Members cannot be excluded from a committee room by the authority of the committee, the committee, if it desires that other Members should not be present at its proceedings, and such Members refuse to withdraw, should adjourn and, if they persist in attending at subsequent meetings, the committee should apply to the House for power to effect their exclusion (*k*).

A member of the House of Commons, who is not named of a committee, may not address the committee, put questions to witnesses, or interfere in any manner whatever in the proceedings (*l*); nor has a Member who is under examination at a committee any right to be present during any debate upon the answers given by him (*m*).

**Secret committees.**—When, in the opinion of either House, secrecy ought to be maintained, secret committees, or, as they are termed

(*i*) Lord Acts (Ireland) Committee, Minutes, H. C. 310, pp. xxix, xxx (1894).

(*j*) Parl. Deb. (1842) 64, cc. 755 *et seq.*; *ibid.* (1849) 102, c. 1182; *ibid.* (1855) 137, c. 18; *ibid.* (1857) 146, c. 137; *ibid.* (1861) 162, c. 2095; *ibid.* (1879) 247, c. 1957.

(*k*) Parl. Deb. (1849) 102, c. 1183.

(*l*) 4 Hatsell, 135; Parl. Deb. (1844) 73, cc. 725-26.

(*m*) C. J. (1780-82) 870.

in the Commons, committees of secrecy (*n*), are appointed (*o*), whose proceedings and inquiries are conducted throughout with closed doors; and it is the invariable practice for all Members, not being of the committee, to be excluded from the committee room throughout the whole of its proceedings.

"In the course of the debate (on the Committee of Secrecy on the Bank of England), Mr. Fox and Mr. Grey both stated distinctly and expressly, and without contradiction, that the nature of a committee of secrecy was only that it excluded from their proceedings all strangers; but that the members of the committee were not otherwise bound to individual secrecy out of the committee, than as their own sense of duty or propriety might suggest, according to the nature and object of their inquiry" (*p*).

In the Lords no record is kept of the proceedings of a secret committee, though its report is ordered to be printed as soon as it has been presented to the House, but in the Commons the evidence taken by a committee of secrecy is usually reported to the House and printed (*q*).

When committees were appointed to examine the physicians of King George III, the Commons ordered "That no member of this House, but such as are members of the committee, be there present" (*r*).

#### EXCEPTIONAL PROVISIONS

**Hearing of parties before select committees.**—By leave of the House parties whose conduct forms the subject, or one of the subjects, of an investigation by a select committee, or whose rights and interests, as distinct from those of the general public, are directly affected by a public bill or other matter which has been referred to the consideration of such a committee, are sometimes allowed to be heard in person or by counsel before the committee.

The order for the hearing of the party or parties concerned is made either on the appointment of the committee (*s*), or subsequently as a result of a special report from the committee (*t*), or merely on the motion of the chairman (*u*). Orders for the hearing of parties have also been made upon the petition of the party interested, praying to be heard (*a*).

The order usually provides that the hearing of the parties shall be at the

(*n*) A committee sitting in private, and not reporting its evidence for reasons of secrecy, does not thereby become a committee of secrecy.

(*o*) L. J. (1796-98) 96, 113; *ibid.* (1798-1800) 176; *ibid.* (1801-2) 97; *ibid.* (1818) 436; *ibid.* (1819) 35; *ibid.* (1820) 115; *ibid.* (1847-48) 22; C. J. (1810) 37; *ibid.* (1810-11) 37; *ibid.* (1817) 26, 318; *ibid.* (1819) 64; *ibid.* (1831-32) 329; *ibid.* (1836) 353; *ibid.* (1837) 26; *ibid.* (1844) 461; *ibid.* (1857) 24, 38.

(*p*) Colchester, i, 91. See also Parl. Hist. xxxiii, 58; Parl. Reg. I. 807, 821 (1797).

(*q*) C. J. (1819) 408; *ibid.* (1831-32) 585; *ibid.* (1836) 840; *ibid.* (1837) 662. *Aliter*, *ibid.* (1844) 592.

(*r*) C. J. (1810-11) 6; *ibid.* (1812) 17.

(*s*) L. J. (1919) 382; *ibid.* (1931-32) 154; *ibid.* (1932-33) 19; *ibid.* (1934-35) 32, 88; *ibid.* (1935-36) 241; C. J. (1913) 18; *ibid.* (1918) 65; *ibid.* (1931-32) 178; *ibid.* (1932-33) 26; *ibid.* (1934-35) 103; *ibid.* (1935-36) 289.

(*t*) C. J. (1864) 193; *ibid.* (1888) 234; *ibid.* (1912-13) 384, 388, 430.

(*u*) L. J. (1878-79) 294; *ibid.* (1884-85) 393; *ibid.* (1893-94) 235; *ibid.* (1898) 117; *ibid.* (1904) 227; C. J. (1861-62) 307; *ibid.* (1890) 458; *ibid.* (1893-94) 344; *ibid.* (1898) 117; *ibid.* (1900) 178.

(*a*) L. J. (1884-85) 118, 124, 154; C. J. (1806-7) 110, 228; *ibid.* (1822-23) 405; *ibid.* (1833) 568; *ibid.* (1857) 43; *ibid.* (1857-58) 138, 150; *ibid.* (1860) 314; *ibid.* (1867-68) 268, 273; *ibid.* (1868-69) 51.

discretion of the committee (*b*). Orders are, however, sometimes made for the hearing of particular persons (*c*), or of all such persons as shall within a time limited by the order have presented petitions praying to be heard (*d*), which leave no discretion to the committee as to the hearing.

It was formerly usual to give parties the option of being heard in person or by counsel (*e*) (or of being heard in person, or by their counsel or agents), but in recent years the tendency has been to restrict the hearing to the counsel alone without the party (*f*). Orders are, however, still sometimes made for the hearing of parties by themselves, their counsel or agents (*g*). Orders have also been made, though not very recently, which gave the parties the option of being heard by their counsel or agents (*h*), or of being heard in person or by their agents (*i*), or which restricted the hearing to the party alone without counsel (*j*), or to a representative not being a counsel (*k*).

In the Commons it is not usual to allow a party to be heard both in person and by counsel (*l*), though orders have been made by both Houses for the hearing of parties by themselves, their counsel and agents (*m*).

When orders are made for the hearing of parties, orders are at the same time sometimes made for the hearing of parties on the other side (*n*). In some instances parties have been given leave by their counsel or agents to examine witnesses before committees (*o*).

Where a party is given the right to be heard, it seems he is entitled to adduce evidence; but it is otherwise where the hearing is at the discretion of the committee.

**Sub-committees.**—A select committee, having only a delegated authority, cannot, without the leave of the House, divide itself into sub-committees and apportion its functions among such sub-committees, or delegate to a sub-committee any of the authority delegated to it by the

(*b*) L. J. (1919) 382; *ibid.* (1931-32) 154; *ibid.* (1932-33) 19; *ibid.* (1934-35) 32 88; *ibid.* (1935-36) 241; C. J. (1900) 178; *ibid.* (1912-13) 384, 388, 430; *ibid.* (1913) 18; *ibid.* (1918) 65; *ibid.* (1931-32) 178; *ibid.* (1932-33) 26; *ibid.* (1934-35) 103, *ibid.* (1935-36) 289.

(*c*) L. J. (1884-85) 118, 124, 154; C. J. (1868-69) 51; *ibid.* (1870) 100; *ibid.* (1877) 258; *ibid.* (1880) 188.

(*d*) C. J. (1890-91) 96; *ibid.* (1892) 134, 244; *ibid.* (1907) 204.

(*e*) *Per* Mr. Speaker Onslow, Chandler, Deb. x. 98. For the last instance of an order framed in this form, see C. J. (1868-69) 61.

(*f*) Committees on matters, L. J. (1919) 382; C. J. (1900) 178; *ibid.* (1912-13) 384, 388, 430; *ibid.* (1913) 18; *ibid.* (1918) 65; committees on public bills, L. J. (1878-79) 294; *ibid.* (1884-85) 393; *ibid.* (1934-35) 32; C. J. (1860) 373; *ibid.* (1889) 253; joint committees, C. J. (1931-32) 178; *ibid.* (1932-33) 26; L. J. (1934-35) 88; C. J. (1934-35) 103.

(*g*) Committees on matters, C. J. (1935-36) 289; committees on public bills, *ibid.* (1892) 134, 244; *ibid.* (1907) 204. This is the usual practice in the case of hybrid and private bills referred to select committees, see p. 915.

(*h*) C. J. (1822) 405; *ibid.* (1864) 193.

(*i*) L. J. (1884-85) 118, 124, 154.

(*j*) C. J. (1737-41) 249 (1738); before a joint committee, L. J. (1892) 140; C. J. (1892) 344.

(*k*) L. J. (1884-85) 359.

(*l*) *Per* Mr. Speaker Onslow, Chandler, Deb. x. 98.

(*m*) L. J. (1893-94) 235; *ibid.* (1898) 117; *ibid.* (1904) 227; *ibid.* (1912-13) 288; *ibid.* (1931-32) 154; *ibid.* (1932-33) 19; C. J. (1806-7) 228; *ibid.* (1880) 188; *ibid.* (1893-94) 344; *ibid.* (1898) 146; *ibid.* (1912-13) 394. For instances of orders for the hearing of parties by their counsel and agents, see C. J. (1833) 568; *ibid.* (1854-55) 367; *ibid.* (1877) 259.

(*n*) Committees on matters, C. J. (1822-23) 405; *ibid.* (1868-69) 51; committees on public bills, L. J. (1934-35) 32; C. J. (1890-91) 96; *ibid.* (1892) 134, 244; *ibid.* (1907) 204.

(*o*) C. J. (1833) 167, 169, 558.

House (*p*). A committee may, however, avail itself of the services of its members individually or in the form of sub-committees for purposes connected with the business of the committee, such as drafting, which do not involve a delegation of authority.

In special cases, however, committees have been empowered to divide themselves into sub-committees and to apportion the subjects referred to their consideration between such sub-committees, such sub-committees having the same powers as the whole committee (*q*); or to appoint one or more sub-committees with power to send for persons, papers, and records, and to sit notwithstanding any adjournment of the House, to take evidence or to consider any matter that may be referred to them by the committee (*r*).

Committees which have been empowered to appoint sub-committees have also been given certain directions by the House relating to the appointment and powers of such sub-committees (*s*).

(1) A select committee has been empowered to refer to sub-committees any of the matters referred to the select committee (*t*).

(2) A select committee also has been empowered to appoint a co-ordinating sub-committee

(a) to refer to sub-committees any of the matters referred to the select committee;

(b) to review, co-ordinate and direct the work of the sub-committees (*u*).

(3) A co-ordinating sub-committee has been empowered to refer to the sub-committees any of the matters referred to the select committee (*a*).

(4) A co-ordinating sub-committee has been empowered to alter the terms of reference of a sub-committee, direct two or more sub-committees to sit jointly, nominate members of the select committee for service on any sub-committee, appoint the chairman of any sub-committee (a sub-committee having no power to choose a chairman (*b*)) and discharge members of any sub-committee and appoint other members of the select committee in substitution (*c*).

(5) Every sub-committee appointed by the select committee or by a co-ordinating sub-committee has been given power to send for persons, papers, records, to sit notwithstanding any adjournment of the House, to adjourn from place to place (*d*).

(6) The *quorum* of sub-committees has been fixed by the House (*e*), but when two or more sub-committees have been ordered by any co-ordinating sub-committee to sit jointly (under the power described in

(*p*) Parl. Deb. (1819) 39, cc. 776-77.

(*q*) C. J. (1921) 229; *ibid.* (1922) 35; *ibid.* (1923) 26; *ibid.* (1924) 97.

(*r*) L. J. (1932-33) 266; *ibid.* (1933-34) 16; C. J. (1932-33) 266; *ibid.* (1933-34) 12. public bills, L. J. (1934-35) 32; C. J. (1890-91) 96; *ibid.* (1892) 134, 244; *ibid.* (1907)

(*s*) C. J. (1943-44) 13-14.

(*t*) C. J. (1943-44) 13-14.

(*u*) C. J. (1943-44) 13-14.

(*a*) C. J. (1943-44) 14. The power granted to co-ordinating sub-committees has been made subject to approval by the Select Committee, see e.g. H. C. 125, p. 6 (1943-44).

(*b*) H. C. 133, p. 7 (1942-43); H. C. 125, p. 5 (1943-44).

(*c*) C. J. (1943-44) 13-14.

(*d*) C. J. (1943-44) 13-14.

(*e*) C. J. (1936-37) 19.

para. 4 above) the House has ordered that a separate quorum for each sub-committee shall be present (*f*).

Where committees are empowered to appoint sub-committees they are sometimes authorized to appoint from outside their own body additional persons to serve on such sub-committees (*g*).

A sub-committee may not report directly to the House, but only to the committee by which it has been appointed. Where the examination of witnesses is delegated to a sub-committee, it is customary for the appointing committee to report the evidence taken by the sub-committee to the House.

On giving power to select committees to appoint sub-committees, the House has also ordered that every such sub-committee must report any evidence taken to the select committee, *e.g.*, C. J. (1943-44) 13-14.

**Investment of select committees with special powers.—**

Where necessary any other powers that may be thought proper are conferred upon select committees.

Thus the Select Committee of the Lords on the Sweating System was empowered to employ a gentleman to visit the localities where the existence of the system was alleged, and to examine into the evidence proposed to be submitted to the committee (*h*); while, in the Commons, the Select Committee on Scotch Distilleries was given power to give directions for printing certain queries which it thought necessary to have circulated for the purpose of obtaining information material to the objects of its inquiry, and also other papers and accounts which might be laid before it (*i*); the Select Committee on Patent Medicines was given power to order analyses to be made (*j*), and the Select Committee on Telephones was empowered to appoint persons from outside its own body for the purpose of obtaining special expert information and advice upon the subject matter of its inquiry (*k*).

The Joint Committee on Indian Constitutional Reform was given power to call into consultation representatives of the Indian States and of British India (*l*).

In the years 1940-45, following a recommendation in a special report (H. C. 130 (1939-40)), select committees on National Expenditure were given power, in cases where considerations of national security precluded the publishing of certain recommendations and of the arguments on which they were based, to address secret memoranda to the Prime Minister for the consideration of the war cabinet. But the House ordered that whenever this power was exercised, committees should report the fact as soon as possible to the House. See *e.g.* Votes and Proceedings, 19 January 1945; also H. C. 178, pp. 3 & 13 (1939-40); H. C. 126, pp. 2 & 5 (1940-41); H. C. Deb. (1940-41) 374, c. 1501; H. C. 126, p. 2 (1941-42); H. C. 125, p. 2 (1943-44); Mr. Speaker has ruled that a secret memorandum of this kind cannot be discussed in secret session, since it has not been laid before the House (H. C. Deb. (1943-44) 398, c. 408-411).

#### REPORTS OF SELECT COMMITTEES

**Power of committees to report their opinion.—**By S.O. No. 61 a select committee of the Commons which has been invested with power

(*f*) C. J. (1943-44) 13-14.

(*g*) C. J. (1917-18) 170; *ibid.* (1918) 13, 72, 204; *ibid.* (1920) 94, 151.

(*h*) L. J. (1888) 455.

(*i*) C. J. (1797-98) 439.

(*j*) C. J. (1912-13) 124; *ibid.* (1913) 18; *ibid.* (1914) 252.

(*k*) C. J. (1921) 50; *ibid.* (1922) 25.

(*l*) L. J. (1932-33) 135; *ibid.* (1933-34) 12; C. J. (1932-33) 136; *ibid.* (1933-34) 12

to send for persons, papers, and records may report its opinion and observations upon the matters referred to its consideration, even though it is not expressly directed to do so by the order of reference.

**Consideration of resolutions recommending public expenditure.**—Select committees may consider and report to the House resolutions recommending an outlay of public money for the purposes therein specified without the previous signification of the royal recommendation (see p. 728) because such a resolution is regarded as analogous to those abstract resolutions by the House in favour of public expenditure which are in the nature of suggestions, and are not in themselves binding upon the action of the House (*m*).

**Preparation of draft report.**—When the examination of witnesses has been concluded in a committee on a matter, the chairman usually prepares a draft report or resolutions, copies of which it is customary to circulate to the members before the report is considered by the committee.

Sometimes a meeting is held for the purpose of discussing the conclusions to which the evidence leads and the general line to be adopted in the recommendations before a draft report is prepared. Another method of proceeding is for the committee to come to resolutions on the subject of its reference on which the chairman or some other member proceeds to draft a report.

Every member of a committee is entitled to submit a draft report for the consideration of the committee, and if more than one is submitted, each is entered *in extenso* on the minutes of the proceedings.

If, after the chairman has submitted his draft report, any member who has not already submitted an alternative draft report wishes to do so, the committee may adjourn in order to afford him time to prepare it. No alternative draft report can be submitted once a draft report has been ordered to be taken into consideration, or to be read a second time, paragraph by paragraph, unless the final question for agreeing to the draft report (as amended) is negatived (see p. 604).

**Consideration of draft report.**—If only one draft report is submitted for consideration, the report being read, or taken as read, the chairman, if the committee is a Lords' committee, proposes the question, "That the draft report be now considered"; but if the committee is a committee of the Commons, the question proposed is, "That the draft report be read a second time, paragraph by paragraph." If, however, more than one draft report is submitted, a motion must be made, that one of them (usually that submitted by the chairman) be now considered, or be read a second time, paragraph by paragraph, according as the committee is a Lords' or a Commons' committee. To this question an amendment may be moved, to leave out the name of the member by whom the report is prepared and substitute that of another member, with the object of substituting the alternative (or, if more than two draft reports have been submitted, another) draft report, as the basis of the committee's report.

In a Lords' committee amendments that each of the draft reports be considered instead of that submitted by the chairman may be moved *seriatim*

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(*m*) East India Finance Committee, 2nd Rep. H. C. 194, p. 4 (1873); House of Commons (Ventilation) Committee, Rep., H. C. 173, p. ix (1886) (1).



to the question for considering the latter. In a Commons' committee, however, if the decision is against the amendment, no further amendment having for its object the substitution of a third draft report can be moved, though the main question may, of course, be negatived.

Each paragraph of the draft report adopted as the basis for the committee's report is then separately considered and becomes liable to amendment according to the ordinary rules which govern amendments.

In a Lords' committee, owing to the form in which the question on an amendment is put (see p. 584), the rejection of an amendment for leaving out words does not preclude the moving of further amendments to those words or any of them.

If no amendment is offered to a paragraph, or when all amendments proposed thereto have been disposed of, a question is put, that the paragraph, or the paragraph, as amended, stand part of the draft report. After this question has been agreed to, no further amendment can be made to the paragraph. An amendment consisting of a new paragraph may be moved when the committee reaches the place in the draft report where the paragraph is proposed to be inserted.

Portions of a draft report other than that adopted as the basis of the committee's report may be offered as amendments to the latter provided they are relevant thereto.

In a Commons' committee after a decision has been given on an amendment to any part of a paragraph, an earlier part cannot be amended, nor can the further consideration of a paragraph be postponed after a decision has been come to upon an amendment proposed thereto, but it is otherwise in a Lords' Committee (*n*).

When every paragraph and proposed new paragraph has been considered and disposed of, the question is put : "That the draft report (as amended) be agreed to," or, if the committee is a committee of the Commons, "That the draft report (as amended) be the report of the committee to the House." Once this question has been agreed to, the report cannot be further amended. If the question is negatived, the committee may either proceed with the consideration of one of the other draft reports, if any, or of any further draft which may be submitted by any member of the committee (*o*), or make a special report to the effect that it is unable to agree upon a report (*p*).

If a committee is dilatory in making a report, the House may direct the committee to report with all convenient speed, or by a specified date.

A committee, finding itself prevented by the impending dissolution of Parliament from completing the consideration of a draft report, postponed the consideration of the remaining paragraphs, agreed to a new paragraph setting out the facts, and resolved that so much of the proposed report as had been agreed to should be the report of the committee to the House (*q*).

**Consideration of draft resolutions.**—Where, instead of a draft report, resolutions are submitted, each proposed resolution is moved as a

(*n*) Indian Constitutional Reform (Joint) Committee, H. L. 6 pp. 312, 538 (1934-35).

(*o*) Workmen's Trains Committee, H. C. 270, pp. xix *et seq.* (1905).

(*p*) C. J. (1919) 426 ; *ibid.* (1923) 297.

(*q*) Contracts (Public Departments) Committee, H. C. 438, p. xix (1857-58) ; Betting Duty Committee, H. C. 139, p. lviii (1923).

substantive motion to which amendments may be proposed, subject to the same rules as in a Committee of the whole House. No resolution or amendment may be proposed which is not within the order of reference ; and if any such resolution or amendment is proposed, the chairman will decline to put it from the chair. When a resolution has been agreed to, the committee cannot review and amend it. When more than one series of resolutions are submitted, each set is entered in full on the minutes as read, after which it is usual to move that those proposed by Mr. A. (generally the chairman), be now taken into consideration ; which question may be amended by leaving out " Mr. A.," and inserting " Mr. B.," and, the opinion of the committee being ascertained, the consideration of the resolutions preferred by the majority is proceeded with.

Any one of the draft resolutions submitted by other members may be moved as an amendment to any resolution to which it is relevant, and, after all the proposed resolutions have been disposed of, other resolutions may be proposed, provided they are within the order of reference and not inconsistent with any previous decision of the committee.

**Consideration by Select Committee of Reports from Sub-Committees.**—Where a committee has appointed a sub-committee it has sometimes contented itself with reporting the sub-committee's report to the House (*r*) ; on other occasions a committee has adopted the sub-committee's report with or without amendment as its own report (*s*) or has referred it back to the sub-committee in whole or in part (*t*) ; or, having considered the sub-committee's report, a committee has adopted it as the basis of a report and ordered the chairman to prepare a draft report accordingly (*u*).

**Minority reports.**—It is the opinion of the committee, as a committee, not that of the individual members, which is required by the House, and, failing unanimity, the conclusions agreed to by the majority are the conclusions of the committee. No signatures may, therefore, be attached to the report for the purpose of showing any difference of opinion in the committee or the absence thereof ; nor may the report be accompanied by any counter-statement, memorandum of dissent, or protest from any dissenting or non-assenting member or members ; nor ought the committee to include in its report any observations which the minority or any individual member desires to offer, but which are not subscribed to by the majority (*a*) ; nor may a draft report which has been submitted to the committee, but has not been entertained by it, be printed as an appendix to the report (*b*). If a member disagrees to certain paragraphs in the report, or to the entire report, he can record his disapproval by dividing the committee against those paragraphs to which he objects, or against the entire report, as the circumstances of the case require ; and can put on record his observations and conclusions, as opposed to those

(*r*) H. C. 183 (1920).

(*s*) H. C. 178, p. 11 (1939-40).

(*t*) H. C. 133, p. 9 (1942-43) ; H. C. 125, p. 12 (1943-44).

(*u*) H. C. 133, p. 7 (1942-43).

(*a*) Opinion expressed by Mr. Speaker in reference to the proceedings of the Select Committee on Shop Assistants (1930-31).

(*b*) Select Committee on the Railway Committee (1846) H. C. 236, Qs. 106, 108 (1847).

of the majority, by proposing an alternative draft report or moving an amendment to the question for reading the draft report a second time (*c*).

**Procedure where a committee is unable to agree upon a report.**—Where a committee is unable to agree upon a report, it may make a special report to that effect, together with the minutes of the evidence taken before it (*d*), or merely report the minutes of the evidence taken before it to the House without any observations or expression of opinion (*e*). This latter course has been followed by committees in other circumstances also (*f*).

**Reporting of evidence.**—It is usual to present the evidence to the House together with the report. A committee may, however, instead of reporting the whole of the evidence to the House, report only so much of it, or such summary of it, as the committee may judge necessary in order to present the grounds of its conclusions to the House (*g*).

When the evidence has not been reported by a committee, or if the evidence, as reported, should not be deemed sufficiently full or complete, the House may order the minutes of the evidence to be laid before it (*h*). When the evidence is presented in pursuance of such an order it is usually ordered to be printed.

In the case of the Ceylon Committee in 1850, however, the House, instead of ordering the evidence to be printed, referred it to the Secretary of State for the Colonies for the consideration of Her Majesty's Government (*i*).

It is not unusual for committees to report to the House, as an appendix to the evidence or the report, papers which have been laid before the committee.

A committee before which counsel have been heard has been given leave to report to the House the minutes of the speeches delivered by such counsel (*j*).

**Presentation of more than one report.**—Where the matter referred to the consideration of a select committee is one which admits of being, or requires to be, reported upon in parts, the necessary power is conferred upon the committee at the time of its appointment (*k*), or the House gives leave subsequently to the committee, on the application of the chairman, to report its opinion (or observations) from time to time (*l*).

Where a committee is authorized to report from time to time, it is at liberty to make as many reports as it thinks proper, and at convenient intervals as it makes progress in the business referred to its consideration.

(c) Denison, 68-70.

(d) Nationality of Married Women (Joint Committee) H. C. 115, pp. vi, xxiv-xxv (1923); C. J. (1923) 297.

(e) Inland Revenue and Customs Establishments, H. C. 424, p. xxiv (1863).

(f) See, for instance, Callan Schools, H. C. 255, pp. iii, vi (1873); Water Resources and Supplies (Joint Committee), H. C. 121, p. viii (1934-35), C. J. (1934-35) 317.

(g) Parl. Deb. (1837) 38, c. 191.

(h) Parl. Deb. (1837) 38, c. 191; C. J. (1821) 438; *ibid.* (1830-31) 168; *ibid.* (1833) 671, *ibid.* (1850) 637; *ibid.* (1895) 325; *ibid.* (1896) 406. Evidence taken before a committee in the preceding session has similarly been ordered to be laid before the House, and was presented by one of the Clerks attending committees, C. J. (1837-38) 703, 707.

(i) C. J. (1850) 661.

(j) C. J. (1934-35) 214.

(k) L. J. (1928-29) 70; *ibid.* (1934-35) 22; C. J. (1847-48) 139; *ibid.* (1906) 45; *ibid.* (1920) 94.

(l) L. J. (1888) 353; *ibid.* (1932-33) 260, C. J. (1893-94) 517; *ibid.* (1917-18) 215; *ibid.* (1918) 200; *ibid.* (1921) 104.

This authority gives power to the committee to report, not only upon the subject originally referred to it, or upon the general subject of its appointment, but also upon matters occasionally referred to it (*m*).

If a committee not having power to report from time to time makes a report to the House, the committee is dissolved, and if further proceedings were desired, it would be necessary to revive the committee (*n*).

**Reporting of evidence from time to time.**—It is the general custom not to report the evidence until the inquiry has been completed, and the report is ready to be presented; but where an intermediate publication of the evidence is thought desirable, the necessary power is conferred upon the committee on its appointment (*o*), or the House grants leave subsequently on the application of the chairman for the committee to report the minutes of the evidence taken before it from time to time (*p*).

In such cases the committee is to exercise its discretion as to reporting the evidence from day to day, or otherwise; and as to the best division of the evidence for the purpose of reporting it to the House (*q*).

**Presentation of reports to the House.**—When a select committee has agreed upon its report, the chairman or some other member is directed to make the report to the House, or to report to the House the resolutions to which the committee has come, as the circumstances of the case require. By S.O. No. LI of the House of Lords any report from a select committee, other than a select committee on a private bill, is to be printed and circulated. The proceedings of the committee are printed with the report.

In the Commons, the report of a select committee is delivered by the clerk to one of the clerks at the table of the House on behalf of the chairman or other member of the committee charged with the duty of presenting the report to the House. The report is deemed to have been, and is entered in the Votes and the Journal as having been, received and ordered to lie upon the table and to be printed, and no other order can be made in reference to it the same day (*r*).

In some cases the House has ordered that only such number of copies of the report of a committee, with the appendix thereunto, be printed as shall be sufficient for the use of the members of the House (*s*); or that the report be printed together with the minutes of the proceedings, but without the minutes of the evidence (*t*).

In session 1941-42 the House resolved that a report of the Committee of Privileges and minutes of evidence should be printed for the use of Members only, and that not more than 615 copies should be printed; it was further resolved that any Member or any other person who disclosed the contents of the report, proceedings or evidence, except in secret session, would be guilty of a breach of privilege. Arrangements were made for the

(*m*) East India Finance Committee, 1st Rep., H. C. 179, pp. iii *et seq.* (1873); Publications and Debates Reports Committee, H. C. 127 (1936-37).

(*n*) C. J. (1801) 273; Parl. Reg. XV. 50.

(*o*) C. J. (1833) 548; *ibid.* (1932-33) 184; *ibid.* (1933-34) 12.

(*p*) L. J. (1842) 73; C. J. (1847) 126; *ibid.* (1857) 282; *ibid.* (1883) 413; *ibid.* (1934-35) 235, 317. For an instance of such an application being refused, see C. J. (1846) 787.

(*q*) Parl. Deb. (1837) 38, c. 190.

(*r*) Parl. Deb. (1810) 17, c. 318.

(*s*) C. J. (1801-2) 413.

(*t*) C. J. (1874) 204.

delivery of the report to Members and the return of the copies under cover to the Vote Office after being read, all of which copies were ordered to be destroyed, save for two copies to be preserved by the Clerk of the House; see C. J. (1941-42), 123.

A committee which had received leave to sit during a prolonged adjournment of the House was given leave to send its report, if it thought fit and the House was not sitting, to the Clerk of the House, who was in that event to give directions for the printing of the report and its circulation, and to lay the report upon the table at the next sitting of the House (*u*); and the Select Committee appointed to join with a Committee of the House of Lords on Indian Constitutional Reform in the sessions of 1932-33 and 1933-34, which had been given power to report from day to day, or otherwise, the minutes of the evidence taken before it, and to sit notwithstanding any adjournment of the House, was authorized, if the House was not sitting, to send such minutes to the Clerk of the House who was thereupon to give directions for the printing and circulation of the minutes, and to lay them upon the table of the House at its next sitting (*a*).

On 31 October 1934, both Houses ordered that the report of the Joint Committee on Indian Constitutional Reform, together with the minutes of the proceedings of the Committee, when made from the committee, should be printed (*b*), and when the report was presented both Houses resolved that it was desirable that the publication of the report and the minutes should take place simultaneously in Great Britain and in India, and that copies printed by His Majesty's Stationery Office should be published in India at the same time as they were published in Great Britain (*c*).

**Special reports.**—Besides the report properly so-called relating to the subject-matter referred to the committee, it is frequently necessary for a committee to make what is termed a special report in reference to some matter incidentally arising relating to the powers, functions or proceedings of the committee. Such reports are similar in point of form, and are proceeded upon in the same manner as the principal report of the committee (*d*).

A report from a committee desiring the instructions of the House as to the authority of the committee or the proper course for it to pursue (*e*); or a report that a witness has failed to obey a summons to attend (*f*) or has refused to answer questions addressed to him by the committee (*g*), are examples of such special reports.

In the Commons a select committee having power to send for persons, papers, and records may make a special report of any matters which it may think fit to bring to the notice of the House without obtaining the leave of the House (S.O. No. 61).

(*u*) C. J. (1914-16) 22; *ibid.* (1937-38) 395.

(*a*) C. J. (1932-33) 184; *ibid.* (1933-34) 12. The Lords, on their part, ordered that, if the House of Lords was not sitting, minutes of the evidence might be delivered to the Clerk of the Parliaments, and when so delivered should be deemed to have been laid upon the table of the House, and be printed and delivered out, L. J. (1932-33) 166; *ibid.* (1933-34) 16.

(*b*) L. J. (1933-34) 349, C. J. (1933-34) 333.

(*c*) L. J. (1933-34) 350, C. J. (1933-34) 335.

(*d*) On 5 November 1940 a Special Report was read to the House by the Clerk at the Table, after which a Motion founded on the Report was moved by the Chairman of the Select Committee, H. C. Deb. (1939-40) 365, c. 1205.

(*e*) Parl. Deb. (1812) 23, c. 883.

(*f*) C. J. (1920) 263.

(*g*) C. J. (1897) 361; *ibid.* (1912-13) 543.

**Unfinished inquiries.**—Like other orders of the House the appointment of a committee is determined by a prorogation (*h*), and accordingly, when a committee finds itself unable to complete its inquiries before the end of the session, it reports the fact to the House together with any evidence which it may have taken (*i*).

In its report the committee usually recommends the appointment of a committee in the next session to continue the inquiry. This course is usually followed, and the evidence taken in the previous session is referred to the new committee (*j*).

A committee has been appointed to inquire into that portion of the reference to the original committee which that committee had been precluded by want of time from reporting on in the preceding session (*k*).

Where for any reason the evidence taken before the committee of the previous session has not been reported, the committee appointed to continue the inquiry cannot report it except as a paper in the appendix to the minutes of the evidence taken by them. To obviate this difficulty the House will order the evidence to be laid before it, and when the evidence is presented will refer it to the committee. When the latter presents its report the House will order the evidence taken in the previous session to be printed.

Where a committee has adjourned *sine die*, or to a day beyond the anticipated date of prorogation, without reporting the minutes of the evidence taken before it, the House has in recent years ordered the minutes of the evidence to be laid before it, and when presented has ordered them to be printed (*l*).

**Premature publication of reports of committees.**—Any publication of a draft report, which has been submitted to a committee, before such report has been agreed to by the committee and presented to the House (*m*), or of the report of a committee before it has been presented to the House (*n*), is treated as a breach of privilege; and when the report of a committee, which had been presented to the House but was not yet available to Members in printed form, was communicated to the press, the Speaker stated that the more regular practice was that the members of the House should be the first to be put in possession of the results of the deliberations of a select committee (*o*).

**Consideration of reports of select committees.**—In the House of Lords when it is proposed to take the report of a select committee into consideration, notice must be given on the minutes of the day on which it is proposed to take it into consideration (S.O. No. LI). Such notice

(*h*) H. C. Deb. (1921) 148, c. 177.

(*i*) See, for instance, L. J. (1888) 446; *ibid.* (1895) 232; *ibid.* (1932-33) 362; C. J. (1929-30) 495; *ibid.* (1930-31) 446; *ibid.* (1932-33) 338. For an instance where a committee reported that they had come to the conclusion that it was inexpedient during the existing session to take evidence or to proceed further in the matter to them committed, see L. J. (1886) 87.

(*j*) L. J. (1889) 19; *ibid.* (1896) 155; *ibid.* (1933-34) 154; C. J. (1930-31) 33; *ibid.* (1931-32) 107; *ibid.* (1933-34) 12.

(*k*) C. J. (1891) 139.

(*l*) C. J. (1934-35) 349, 350.

(*m*) C. J. (1831-32) 360. See also Parl. Deb. (1882) 270, c. 1762; *ibid.* (1882) 271, c. 40.

(*n*) Parl. Deb. (1860) 159, c. 813; *ibid.* (1878) 238, c. 802; *ibid.* (1880) 270, c. 1762; *ibid.* (1882) 271, c. 40; Select Committee on the Cottage Homes Bill, 2nd Special Report, H. C. 271 (1899), C. J. (1899) 327, Parl. Deb. (1899) 74, c. 1013.

(*o*) Parl. Deb. (1893-94) 14, c. 812.

may be given on the presentation of the report (*p*) or on a subsequent day (*q*).

In the Commons the report of a select committee may be taken into consideration in pursuance either of an order made upon a previous day (*r*), or of a motion that the report be now read (*s*), or be now taken into consideration (*t*). According to present practice a motion for appointing the report of a committee for consideration on a future day, or for taking the report into consideration forthwith requires notice, and cannot be made on the presentation of the report.

On the consideration of a report motions may be made expressing the agreement (*u*), or the disagreement (*a*) of the House with the report as a whole or with certain paragraphs thereof (*b*), or for agreeing to the recommendations contained in the report generally or with certain exceptions (*c*); or motions may be made which are founded upon, or enforce, the resolutions of the committee (*d*), or are otherwise relevant to the subject-matter of the report, or the business of the committee. In some instances the House has resolved itself into a committee to consider the report of a select committee (*e*). Motions may also be made upon consideration of the report of a select committee for the recommitment of the report (*f*), or, in the Lords, for the reference back of the report to the committee for further consideration, the committee to be enlarged by the appointment of additional members (*g*).

**Recommitment of reports.**—The report of a select committee (*h*), or part thereof (*i*), may be recommitted to the committee, or it may be recommitted and the order of reference amended (*j*).

Where the previous question has by inadvertence been allowed to be moved upon a paragraph proposed to be inserted in the report, the report was recommitted together with the minutes of the proceedings so far as they related to that paragraph (*k*).

A motion for the recommitment of a report may be made upon the consideration of the report or as a substantive motion.

(*p*) L. J. (1875) 71, 299; *ibid.* (1904) 344; *ibid.* (1933-34) 285.

(*q*) L. J. (1894) 235; *ibid.* (1901) 241.

(*r*) C. J. (1801-2) 413, 481; *ibid.* (1806) 147, 152; *ibid.* (1875) 134; *ibid.* (1876) 405; *ibid.* (1887) 399; *ibid.* (1888) 510; Special reports, *ibid.* (1830-31) 168; *ibid.* (1892) 129, 170.

(*s*) C. J. (1834) 471; *ibid.* (1854) 188; *ibid.* (1859) 175.

(*t*) C. J. (1857-58) 348; *ibid.* (1862) 377; *ibid.* (1905) 359; *ibid.* (1907) 449; *ibid.* (1908) 505; *ibid.* (1910) 207; *ibid.* (1916) 215; *ibid.* (1917-18) 303.

(*u*) L. J. (1894) 250; *ibid.* (1933-34) 309; C. J. (1705-8) 597; *ibid.* (1772-74) 649, 740; *ibid.* (1834) 471; *ibid.* (1854) 188; *ibid.* (1888) 511; *ibid.* (1934-35) 31.

(*a*) L. J. (1904) 348; C. J. (1809) 413.

(*b*) L. J. (1904) 347, 348; C. J. (1854) 188.

(*c*) L. J. (1875) 318.

(*d*) C. J. (1801-2) 502; *ibid.* (1806) 155; *ibid.* (1839) 352; *ibid.* (1845) 642; *ibid.* (1852-53) 766, 770; *ibid.* (1854) 188; *ibid.* (1857-58) 348; *ibid.* (1862) 377; *ibid.* (1865) 247, 336; *ibid.* (1887) 306; *ibid.* (1889) 332, 363; *ibid.* (1892) 157.

(*e*) L. J. (1889) 47; C. J. (1796-97) 383.

(*f*) C. J. (1865) 252.

(*g*) L. J. (1901) 268.

(*h*) C. J. (1826-28) 318; *ibid.* (1833) 583; *ibid.* (1837) 478; *ibid.* (1865) 252.

(*i*) C. J. (1772-74) 260.

(*j*) C. J. (1814-15) 430.

(*k*) C. J. (1882) 509.

The effect of recommitting a report is to undo all that has previously been done in the House with reference to the report, and to throw back the subject into the hands of the committee for revision or completion, or for whatever other purpose the recommitment may be ordered; though, of course, it does not impose upon the committee any obligation to go again over the whole matter, or to re-examine the witnesses already fully and properly examined. A recommitment generally takes place for some cause which sufficiently indicates to the committee what it is expected to do, and, hence, it is not usual for instructions to be given on recommitment; but the committee is to gather from the sense of the House in their proceedings what method it is to pursue (*l*). When a report is thus recommitted, the committee, with all its powers, is thereby revived.

**Cancellation of reports.**—In one case a document purporting to be the report of a committee, but which had in fact never been submitted to the committee, was presented to the House, and ordered to be printed. The following session a committee was appointed to consider the circumstances under which the document had been ordered to be printed; and on its report being received, the House resolved, "That the document was not a report which had been agreed to by the said committee, and that the said document be cancelled" (*m*).

Notice being taken that the analysis of evidence appended to the report of a committee in the preceding session comprised observations and opinions not within the scope of such evidence, it was ordered to be cancelled (*n*). Notice also has been taken of certain errors in a statement comprised in the appendix to a report, and a corrected statement ordered to be laid before the House (*o*).

#### PROCEDURE IN SELECT COMMITTEES ON PUBLIC BILLS

The procedure in select committees on public bills only is described below, the procedure in select committees on hybrid bills, private bills and provisional order bills being dealt with elsewhere (see pp. 505, 911, 962, 981).

In a select committee on a public bill when the evidence, if any, has been concluded, the clauses of the bill are considered. The rules which govern the admissibility of amendments in a Committee of the whole House apply equally to proceedings in a select committee, but the chairman has not the power of selecting which amendments or new clauses shall be proposed.

In dealing with clauses or amendments which involve charges on public funds a select committee is subject to precisely the same restrictions as a Committee of the whole House (see p. 526).

On 17 July 1843, Mr. Speaker drew the attention of the House to a clause inserted in a bill by a select committee which, unsanctioned by a financial resolution, charged the payment of certain salaries upon the Consolidated Fund, and the bill was consequently recommitted to the committee (*p*). In the session of 1924-25 the Select Committee on the Sandwich Port and

(*l*) Parl. Deb. (1805) 5, c. 163.

(*m*) C. J. (1847) 254, 682.

(*n*) C. J. (1863) 189.

(*o*) C. J. (1847-48) 621.

(*p*) C. J. (1843) 487.



Haven Bill inserted in one of the clauses of the bill a new subsection which in terms imposed an obligation on the Secretary of State to pay £5,000 towards the construction of a certain bridge, though it was intended that the obligation should fall on the purchasers of the undertaking. When the bill was considered in a Committee of the whole House, this subsection was omitted, and a new clause substituted making it clear upon whom the obligation was to fall (*q*).

A select committee may, if so empowered or directed by an instruction, consolidate two or more bills into one bill (*r*), or divide a bill into two or more bills (*s*), or extend the operation of a bill which is, by its title, limited to a part only of the United Kingdom to another part, or to the whole of the Kingdom (*t*). When two or more bills of the same subject-matter are committed to a select committee, the committee adopts one bill as a basis for its proceedings, and reports the other bill or bills without amendment, with a special report explanatory of the course it has followed (*u*).

If, in addition to reporting the bill with or without amendments, the committee desires to inform the House of any matters relating to the bill, it makes a special report.

If a committee is unable to complete its inquiry, or to complete the consideration of the bill, it makes a special report to that effect, and reports the bill without amendment (*a*).

A committee, thinking it inexpedient, the session being well advanced, to complete the consideration of the bill, has negatived such clauses as it had been unable to consider, and the schedules to the bill, and reported the bill, so amended, to the House with a special report setting forth its reasons for so doing (*b*).

A committee has reported that it had considered the bill up to Clause 53, inclusive, and had ordered the bill to be reported with some amendments (*c*).

**Inability of select committees to decide against Bills.**—A select committee to which a bill has been committed has no power to put an end to the bill (*d*), though a committee has negatived all the clauses and the preamble of a bill, and made a special report to that effect to the House (*e*). If a committee is of opinion that a bill should not be further proceeded with, it may make a special report to that effect, and report the bill, without amendment, to the House (*f*).

A report from a select committee that it is not expedient to proceed further with a bill is usually acquiesced in by the House, the bill being ordered to lie upon the table. A bill has, however, been recommitted or referred back to a committee after the latter had reported that it was not expedient to proceed further therewith (*g*).

(*q*) H. C. Deb. (1925) 186, cc. 1759 *et seq.*

(*r*) C. J. (1906) 374.

(*s*) C. J. (1868-69) 192.

(*t*) C. J. (1870) 113; *ibid.* (1882) 117.

(*u*) C. J. (1892) 277; *ibid.* (1893-94) 396.

(*a*) L. J. (1886) 306; C. J. (1895) 312, 317; *ibid.* (1908) 482.

(*b*) Petit Juries (Ireland) Bill, H. C. 390, pp. 3, 4 (1867-68).

(*c*) L. J. (1888) 434.

(*d*) Parl. Deb. (1864) 176, c. 99.

(*e*) C. J. (1867-68) 305.

(*f*) L. J. (1934-35) 314; C. J. (1919) 413; *ibid.* (1929-30) 424.

(*g*) L. J. (1854-55) 277, 334.

In 1865 the Select Committee of the Lords on the Land Debentures Bill reported that it was not expedient to proceed with the bill ; but on a subsequent day a motion was made, that the House do now resolve itself into a committee on the bill, which was agreed to, and the bill passed through committee with amendments (*h*). In the same session the Land Debentures (Ireland) Bill passed through all its remaining stages after a similar report from a select committee (*i*).

A select committee of the Lords has reported that it had not proceeded to the task of amending a bill as it was of opinion that its recommendations should be considered by the House as a whole ; and the bill was committed to a Committee of the whole House (*j*).

**Duty of select committees to report bills.**—Should a select committee on a bill fail to report it, the House may instruct the committee to report the bill forthwith or by a day named ; and should the committee attempt to dispose of a bill by adjourning *sine die*, or to some very distant day when the probability is that Parliament will not be sitting, the House may order the committee to proceed with the bill notwithstanding its adjournment, or revive the committee, as the case may require, on the fact being stated and the appropriate motion being made.

In the case of the Architects (Registration) Bill, 1927, where the committee, after going through the bill, negatived the question, "That the chairman do report the bill, as amended, to the House," and made a special report to that effect to the House, further action was not taken by the House (*k*).

On 16 June 1871, the Select Committee on the Benefices Resignation Bill [Lords], to whom the Sequestration of Benefices Bill had been committed, having gone through the latter and disagreed to several clauses and to the preamble thereof, negatived the question, "That the chairman do report the bill, as amended, to the House." Upon consideration this was agreed to be irregular, and at the next sitting the committee resolved, on the motion of the chairman, that the decision should be rescinded, and reported the bill, as amended, to the House, with a special report stating that they did not consider it expedient to proceed any further with the bill (*l*).

**Reference of bills as documents to select committees.**—When a bill which has not been read a second time is referred to the consideration of a committee, the committee does not go through the bill, clause by clause, but simply inquires into the merits of the bill, or takes the proposals contained in the bill into consideration in the same manner as proposals embodied in any other document. No report or recommendation of the committee with regard to the bill can have any effect whatever by way of advancing the bill a stage in the House (*m*).

#### SESSIONAL COMMITTEES

In each House a number of committees are re-appointed every session either in pursuance of a standing order or by an order regularly renewed each session, which do not differ in their constitution, functions, or method

(*h*) L. J. (1865) 420, 596.

(*i*) L. J. (1865) 420, 440.

(*j*) L. J. (1907) 266.

(*k*) H. C. 105, pp. iii, xi (1927).

(*l*) H. C. 266, pp. iv, ix, x (1871).

(*m*) Parl. Deb. (1899) 70, cc. 406-7.

of proceeding from the select committees already described, save that most of them are appointed for the consideration, not of a particular subject, but of all matters of a particular class arising during the course of the session, or such of them as are referred to the committee by the House.

In the House of Lords there are seven such committees, namely, the Standing Orders Committee (see p. 960), the Committee of Selection (see p. 962), the Special Orders Committee (see p. 985), the India and Burma Orders Committee (see p. 631, n. (g)), the House of Lords Offices Committee and the Committees for Privileges (see p. 133) and for the Journals (see p. 246).

In the House of Commons there are ten, four appointed in pursuance of standing orders, namely, the Committee of Public Accounts (see p. 644), the Standing Orders Committee (*n*) (see p. 852), the Committee of Selection (see p. 857), and the Committee on Unopposed Bills (*n*) (see p. 911), and six by sessional orders, namely, the Committee of Privileges (see p. 134), the Committee on Public Petitions (see p. 804), the Select Committee on Estimates (see p. 641), the Select Committee on Publications and Debates Reports (see p. 247), the Select Committee on Kitchen and Refreshment Rooms and the Select Committee on Statutory Rules and Orders, etc. (see p. 370).

Where a committee is appointed by standing order the nomination only is renewed from session to session.

### 3. STANDING COMMITTEES

#### APPOINTMENT OF STANDING COMMITTEES

In the House of Commons, in addition to the select committees which are re-appointed every session, provision is made by S.O. No. 47 for the appointment of not more than five standing committees for the consideration of public bills and other business referred to a standing committee. While these committees resemble select committees in that they are composed of a number of members specially named, they are, in the number of their members and the mode of choosing them, more representative of the House as a whole than a select committee, and in functions and procedure are more akin to Committees of the whole House.

The procedure by which (with certain exceptions) bills, when they have been read a second time, stand referred to a standing committee is provided for by S.O. No. 46 (1), and is explained in the chapter on Public Bills, p. 503.

#### CONSTITUTION OF STANDING COMMITTEES

**Standing committee on Scottish Bills.**—One of these standing committees is appointed for the consideration of all public bills relating exclusively to Scotland and committed to a standing committee, and consists of all the Members representing Scottish constituencies together with not less than ten nor more than fifteen other Members nominated in respect of any bill by the Committee of Selection (see p. 857), which in nominating such members is directed to have regard to the approximation of the balance of parties in the Committee to that in the whole House (S.O. No. 47 (2)). These additional members are nominated from

(*n*) The constitution of this committee is prescribed by standing order and differs from that of an ordinary select committee.

time to time in respect of each bill committed to the committee, and serve on the committee only while such bill is under consideration.

**Constitution of the other standing committees.**—Each of the other standing committees consists of not less than thirty nor more than fifty members, nominated by the Committee of Selection which is directed in nominating the members to have regard to the composition of the House. When a public bill relating exclusively to Wales and Monmouthshire is committed to a standing committee, the committee must be so constituted as to comprise all the Members sitting for constituencies in Wales and Monmouthshire.

The Committee of Selection has the power of adding not less than ten nor more than thirty-five members to each of the standing committees, other than the Standing Committee on Scottish bills, in respect of any bill referred to it, to serve on the committee during the consideration of such bill. In adding such members the Committee of Selection is to have regard to their qualifications (S.O. No. 48).

**Discharge of members of standing committees.**—The Committee of Selection is also empowered to discharge members appointed to serve on standing committees (except the members for Scottish constituencies on the Standing Committee on Scottish Bills) for non-attendance or at their own request, and to appoint other members in substitution for them (S.Os. Nos. 47 (2) and 48).

In accordance with a resolution of the Committee of Selection regularly renewed at the commencement of each session, no application for a change in the composition of a standing committee in respect of a particular bill will be entertained by the Committee of Selection while that bill is under consideration by the standing committee (*o*). The Speaker has deprecated criticism in the House of the appointments made by the Committee of Selection (*p*).

**Chairmen of standing committees.**—The chairman of each standing committee is appointed by the Speaker from a panel consisting of the Members appointed by him at the commencement of every session to act as temporary chairmen of Committees of the whole House when requested by the Chairman of Ways and Means (see p. 239), together with the Chairman of Ways and Means and the Deputy Chairman (S.O. No. 80 (4)). The Speaker is given power to change the chairman so appointed from time to time (*ibid.*).

The Chairmen's Panel, of whom three are a quorum, settles points of procedure which are not covered by the rules of the House, and is empowered to report to the House from time to time any resolutions it may come to on matters of procedure relating to standing committees (S.O. No. 80 (4)). Such resolutions relating to standing committee procedure have been reported each session, *e.g.* C. J. (1937-38) 19; *ibid.* (1938-39) 25.

#### PRECEDENCE OF BILLS COMMITTED TO A STANDING COMMITTEE

In all but one of the standing committees precedence is given to government bills (S.O. No. 47 (4)) ; one of the standing committees is appointed

(*o*) C. J. (1919) 45; *ibid.* (1920) 30, etc., etc.

(*p*) Parl. Deb. (1906) 159, c. 953; H. C. Deb. (1921) 144, c. 785; *ibid.* (1924) 171 c. 450.

for the consideration of all public bills relating exclusively to Scotland (S.O. No. 47 (2) ) and on this Committee precedence is always accorded to government bills. The committee in which precedence is given to the bills of unofficial Members is designated by the Committee of Selection (q).

Bills allotted to standing committees, other than that in which unofficial Members' bills have precedence, are considered in such order as the Government from time to time determines. Bills allotted to the standing committee in which unofficial Members' bills have precedence are considered in the order of their allotment, unless the Members in charge of the bills which stand above any particular bill on the list agree to give it precedence over their bills. When the precedence to which a bill is entitled is thus waived in favour of another bill, the first bill continues to take precedence over the remaining bills on the list.

In 1914 the Superannuation (Ecclesiastical Commission and Queen Anne's Bounty) Bill, which had been introduced by an unofficial Member and was practically unopposed, was considered in Standing Committee B (in which government bills had precedence) before a government bill on the day on which they were both appointed, by arrangement with the Minister in charge of the government bill.

#### SITTINGS OF STANDING COMMITTEES

Each standing committee is, in practice, treated as a series of committees on particular bills. The day on which, and hour at which, a committee shall begin the consideration of a bill are appointed by the member who has been appointed chairman of the committee in respect of that bill (r).

In special circumstances two or more bills have been appointed for consideration by a committee on the same day.

If the consideration of a bill is not concluded at a single sitting, the dates and times of the subsequent sittings for the further consideration of the bill are determined by the committee itself (s).

Where it seems likely that the consideration of a bill will not be concluded at a single sitting, it is usual for the committee, before entering on the consideration of the bill, to determine, by resolution, on what days in each week it will sit and at what hour it will meet for the purpose of considering the bill (t). The days of sitting, or any of them, or the hour of meeting may be altered upon motion at a subsequent sitting (u), and the committee may adjourn over a day on which it has previously resolved to sit, or to a day other than that appointed for its next sitting (a), or to an hour other than that fixed for its next meeting (b). Motions for fixing or altering the dates of sittings of standing committees, or the hour of meeting, may be made only at the beginning of a sitting or after further proceedings on the bill before the committee have been adjourned.

(q) C. J. (1907) 136.

(r) C. J. (1923) 31.

(s) Stg. Co. Deb. (1922) 250, 296 ; *ibid.* (1932-33) Co. C., etc. 1023.

(t) Standing Committee C, Proceedings, Livestock Industry Bill, H. C. 98, p. 3 (1936-37).

(u) Standing Committee on Trade, Proceedings, Bankruptcy Bill, H. C. 224, p. 48 (1883).

(a) Standing Committee C, Proceedings, Livestock Industry Bill, H. C. 98, p. 37 (1936-37).

(b) Standing Committee C, Proceedings, Livestock Industry Bill, H. C. 98, p. 17 (1936-37).

Standing committees, like select committees, may sit on any day on which the House is sitting, before, during and after the conclusion of the sitting of the House (S.O. No. 52) (c). When a division is called in the House, the chairman of a standing committee must, however, suspend its proceedings for such time as will, in his opinion, enable members to vote in the division (S.O. No. 47 (1)).

**Adjournment of standing committees.**—Except where a quorum is not present (see p. 620) the chairman of a standing committee has no power to adjourn the committee without the consent of the members present. Any member may at any time during the consideration of a bill, except whilst another member is speaking, move the adjournment of the debate, or of further consideration of the bill, as the case may require. If the motion is accepted by the chairman (see p. 425) and agreed to by the committee, the debate, or further consideration of the bill, as the case may be, is adjourned to the day, if any, previously appointed for the next sitting of the committee. If, however, no day has been so appointed, or it is desired to alter the date or time of the next meeting, the committee must appoint a day for resuming the debate or taking the bill into further consideration. After a day has, if necessary, been fixed for resuming further proceedings on the bill, and any motions which may be made respecting the dates or times of future sittings have been disposed of, the chairman adjourns the committee to the day appointed for the next meeting, or for resuming further proceedings on the bill, as the case may be.

If it is desired further to adjourn a standing committee to a day later than that appointed for its next sitting, the House will, on the motion of the chairman, make the necessary order.

A standing committee ought to be adjourned to a specified day. A committee has, however, sometimes adjourned, with the general concurrence of the members, to a day to be subsequently fixed by the chairman (d). For a committee to endeavour to dispose of a bill which has been committed to it by adjourning *sine die*, or to some distant day, would be inconsistent with the duty imposed on the committee by the order of the House committing the bill to the committee. Nor can a committee relieve itself from the obligation of considering the bills allotted to it and reporting them to the House, by adjourning further proceedings on a particular bill *sine die*, or to some distant day, for once a committee has met to consider a particular bill, it cannot, except in the circumstances described in the following paragraph, or those mentioned on p. 623, enter upon the consideration of another bill before it has completed the consideration of the first.

**Postponement of further consideration of a bill.**—In order to avoid the inconvenience which sometimes arises from this rule, the Chairmen's Panel in 1924 resolved that further consideration of a bill might, on the motion of the member in charge of the bill, be postponed until after

(c) H. C. Deb. (1921) 144, c. 43; Stg. Co. Deb. (1919) i, Local Government (Ireland) Bill, 14.

(d) Standing Committee D, Proceedings, Betting and Lotteries Bill [Lords], H. C. 125, p. 16 (1933-34); Standing Committee A, Proceedings, Marriage Bill, H. C. 40, p. 9 (1936-37).

the next bill on the list had been disposed of, if it appeared to the chairman that the business of the committee would be thereby expedited (*e*).

In 1908 the Chairmen's Panel had resolved that in future the chairman of any standing committee would accept a motion from the member in charge of any bill then before a committee for the adjournment of the proceedings on the bill to a future day to be named by the chairman on the request of the member in charge of the bill (*f*), and that if the motion was agreed to, the committee should be convened to consider the next bill on the list. This resolution was not renewed in any subsequent session, has only been acted upon once, namely, in the case of the Compensation for Subsidence Bill in 1919 (*g*), and is considered to have been superseded by the sessional resolution of the Panel mentioned in the preceding paragraph.

**Suspension of the sitting of a standing committee until a later hour the same day.**—A standing committee, instead of adjourning to a future day, sometimes suspends its sitting and resumes it at a later hour the same day.

The sitting of a standing committee may be suspended till a later hour the same day either (i) in pursuance of a previous resolution of the committee that, at that particular sitting (*h*) or at that particular sitting together with others (*i*), or at every subsequent sitting until the consideration of a particular bill is concluded (*j*), the committee, instead of adjourning, as is customary, at one o'clock or shortly after, will suspend its sitting and resume it at a specified hour, or (ii) where a debate, or further consideration of a bill, is adjourned, upon motion, to a later hour the same day. It is, however, not the practice of chairmen of standing committees to accept a motion which provides for the suspension of the sitting of the committee on that particular day unless either intimation has been given at a previous sitting that it is intended to make such a motion, or the members present unanimously consent to the course proposed.

If it is desired that, during the further proceedings on a bill, or for any shorter period, the committee should suspend its sitting each day and resume it at a later hour, it is usual to pass a resolution to that effect in order to obviate the necessity of making an order in that behalf at every sitting (*k*).

#### PROCEDURE IN STANDING COMMITTEES

S.O. No. 47 (1) provides that the procedure in standing committees is to be the same as in a select committee unless the House otherwise orders. By paragraph (5) of the same standing order, however, the chairman of a standing committee has the same powers of dealing with irrelevance and tedious repetition in debate as are possessed by the chairman of a Committee of the whole House under S.O. No. 18 (see p. 440), and the same powers of accepting motions for the closure of a debate (see p. 450), dealing with dilatory motions (see p. 425) and selecting what amendments

(*e*) Since 1933 a resolution in identical terms has been passed by the Chairmen's Panel, and reported to the House at the beginning of each session, see C. J. (1933-34) 30, etc.

(*f*) Proceedings, H. C. 112 (1908).

(*g*) Stg. Co. Deb. (1919) iv, 350, H. C. 153, p. 4 (1919), C. J. (1919) 263.

(*h*) Standing Committee D, Proceedings, Tithe Bill, H. C. 123, p. 13 (1935-36).

(*i*) Standing Committee D, Proceedings, Betting and Lotteries Bill, H. C. 125, p. 11 (1933-34).

(*j*) Standing Committee C, Proceedings, Livestock Industry Bill, H. C. 98, p. 26 (1936-37).

(*k*) Stg. Co. Deb. (1926) Co. B. 732.

and new clauses shall be proposed, as are exercised by the Chairman of Ways and Means and the Deputy Chairman in a Committee of the whole House under S.Os. Nos. 22, 26, 27, and 28; and in all other respects procedure in a standing committee has, in practice, been assimilated as closely as possible to procedure in a Committee of the whole House. In S.O. No. 27, as applied by S.O. No. 47 (5) to proceedings in a standing committee, twenty is substituted for one hundred as the number necessary to make the majority effective for the closure. The rules which govern the admissibility of amendments in a Committee of the whole House apply to proceedings in a standing committee (*l*). Following the principle which governs procedure in Committees of the whole House, no appeal can be made to the Speaker regarding the decisions and rulings of a chairman of a standing committee (*m*).

**Rules of debate.**—The rules observed by the House regarding order in debate are followed in a standing committee, as also are the rules relating to the preservation of order, decency, and harmony among the members. Accordingly, members of a standing committee address the Chair standing, and may not refer to other members by name (*n*), or smoke (*o*).

**Disorder in standing committees.**—A standing committee has no power to punish one of its members, or any other person, for disorderly words, contemptuous conduct, or any other offence committed against it, but can only report the offence to the House (*p*).

The provisions of S.Os. Nos. 17 and 19 have not been extended to standing committees, and the chairman has, therefore, not the power with which the Speaker and the Chairman of a Committee of the whole House are invested of ordering a Member who is guilty of grossly disorderly conduct to withdraw, or of naming a Member for disregarding the authority of the Chair or abusing the rules of the House by persistently and wilfully obstructing the business of the House or otherwise.

**Admission of strangers.**—Members have the right of access, as in the case of select committees (see p. 598), to the room occupied by a standing committee, but a Member of the House who is not a member of the committee is not allowed to address the committee.

On one occasion in 1919 and another in 1920 a Minister of the Crown was allowed to address a committee of which he was not a member (*q*), but these precedents are not regarded as creating a rule. Members who are not of the committee are not permitted to occupy any of the seats reserved for members of the committee.

Strangers are admitted, except when the committee shall order them to withdraw (S.O. No. 47 (1)).

(*l*) Parl. Deb. (1889) 339, c. 1226.

(*m*) Parl. Deb. (1889) 339, cc. 1222 *et seq.*; H. C. Deb. (1920) 128, c. 579; *ibid.* (1928) 219, cc. 851 *et seq.*

(*n*) Stg. Co. Deb. (1919) iii, 20; H. C. Deb. (1919) 118, c. 1823.

(*o*) Stg. Co. Deb. (1919) 1, Supply, 1; *ibid.* (1935-36), Co. A., etc., 351, 352.

(*p*) Standing Committee D, Proceedings, Unemployment Insurance Bill, H. C. 149, p. 16 (1924-25); Stg. Co. Deb. (1924-25), Co., C. etc., 634; C. J. (1924-25) 337; H. C. Deb. (1924-25) 186, c. 2012.

(*q*) Stg. Co. Deb. (1919) iv, 347.



**Absence of quorum.**—The quorum of a standing committee is twenty (S.O. No. 47 (1)), and until that number is present the committee cannot proceed to business, nor can any business be proceeded with when the members present are reduced below that number (r). It is the duty of the clerk attending the committee, as in a select committee, to call the attention of the chairman to the fact when the number of members present falls below a quorum, whereupon the chairman must suspend the proceedings until a quorum is present or adjourn the committee to a future day (s).

No time-limit within which a quorum must be present is prescribed by standing order, but on 5 March 1929 the Chairmen's Panel decided that if a quorum was not present within twenty minutes from the time at which a standing committee was appointed to meet, the chairman should adjourn the Committee to a future day unless there were any special circumstances which, in his opinion, made it advisable to allow a longer period of grace. In cases where in the course of a sitting the members present become less than a quorum it is not usual for chairmen to allow more than twenty minutes for the re-assembling of a quorum.

If a committee has to be adjourned for want of a quorum, and a day has been already appointed for the next meeting of the committee, the chairman adjourns the committee to that day; and if the failure of a quorum to assemble or to continue in attendance occurs on a day on which, pursuant to a previous resolution of the committee, the sitting is to be suspended for a certain period (see p. 618), the chairman suspends the sitting until the hour appointed for resuming the sitting (t).

In order to deal with the delays caused to the consideration of other bills allotted to a standing committee by the repeated failure of a quorum to attend in the case of a particular bill, the Chairmen's Panel in 1920 resolved that, where on two successive sittings of a standing committee called for the consideration of a particular bill, the committee had to be adjourned by reason of the failure of a quorum to assemble within twenty minutes from the time for which the committee was summoned, the chairman should instruct the clerk to place the bill at the bottom of the list of bills awaiting consideration by that committee; and that the committee should forthwith be convened to consider the next bill on the list (u).

**Divisions in standing committees.**—Divisions in a standing committee are taken in the same manner as in a select committee (see p. 584).

As the question is only put once, if the chairman's opinion as to the decision of a question is challenged, the committee must proceed to a division (a).

The doors of the room in which a committee sits are locked during a division.

If the chairman's opinion as to the decision of a question is challenged, it is the practice for him to allow a short interval to elapse before directing the doors of the committee room to be locked in order to give members, who were not in the room when the question was put, time to come in (b).

(r) Stg. Co. Deb. (1919) i, Supply, 4.

(s) Parl. Deb. (1907) 177, c. 715 *et seq.*

(t) Stg. Co. Deb. (1920) Co. B. 455; Cinematograph Films Bill, H. C. 92, pp. 67, 108 (1927).

(u) C. J. (1920) 251.

(a) Stg. Co. Deb. (1921) Railways Bill, 1539.

(b) *Ibid.* 1009; *ibid.* (1929-30) Cos. A. & B. 1762, 1855.

Following the rule adopted by the House in 1906 (see p. 407) a member may vote although he did not hear the question put, and is not compelled to vote although he is present when the question is put (*c*). When it would appear from the result of a division that a quorum of the committee was not present, the names of those members who being present did not vote are entered in the minutes (*d*). A member who has voted under a misapprehension will be allowed to alter his vote provided he makes his request before the numbers have been declared from the Chair, but cannot alter his vote after the numbers have been so declared (*e*). A standing committee has the power of determining the question of a personal interest in a vote (*f*).

The chairman in a standing committee, as in a select committee (see p. 584), can vote only when there is an equality of votes.

In giving a casting vote the chairman of a standing committee is guided by the same principles as the Speaker in the House or the chairman in a Committee of the whole House in so doing (see p. 410). In the case of the Housing Bill in 1921, however, the numbers being equal on the question that a particular clause should stand part of the bill, the chairman declared himself with the noes, as the member in charge of the bill had given an undertaking during the debate in the House on the second reading of the bill that that particular clause should be deleted (*g*). When the chairman states his reasons for his vote they are entered on the minutes of the proceedings (*h*).

**Powers of standing committees with regard to clauses imposing charges.**—Like a Committee of the whole House in considering a bill, a standing committee cannot consider a clause or provision imposing a charge on the public or on public funds, unless a resolution of a Committee of the whole House authorising the proposed charge has been agreed to by the House (see p. 526). When a standing committee has considered such a clause before the necessary resolution has been agreed to by the House, the Speaker has drawn the attention of the House to the fact on consideration of the bill, and the bill has been recommitted to the committee in respect of the clause improperly considered by it (*i*).

Where an unofficial Member's bill creating a charge has been committed to a standing committee and the government has declined to move a resolution sanctioning the charge, the chairman of the committee, with the consent of the member in charge of the bill, has sometimes refrained from appointing a day for its consideration, and the committee has been convened to consider the next bill on the list (*j*).

(*c*) Standing Committee on Law, Proceedings, Marriage with a Deceased Wife's Sister Bill, H. C. 87, p. 10 (1907).

(*d*) Standing Committee B, Proceedings, Companies Bill, H. C. 84, p. 30 (1928).

(*e*) Stg. Co. Deb. (1919) ii. 918; *ibid.* (1920) Co. B, 688; *ibid.* (1923) Co. A. 5.

(*f*) Standing Committee B, Proceedings, Industrial and Provident Societies (Amendment) Bill, H. C. 72, p. 9 (1929-30); Stg. Co. Deb. (1929-30) Cos. A. & B. 1828 *et seq.*; *ibid.* (1933-34) Co. D., 386, 425.

(*g*) H. C. 109, p. 4 (1921).

(*h*) Standing Committee on Law, Proceedings, Trade Unions and Trade Disputes Bill, H. C. 154, p. 9 (1905).

(*i*) C. J. (1907) 196, Parl. Deb. (1907) 174, c. 1068, *ibid.* 177, c. 716; C. J. (1927) 105; *ibid.* (1929-30) 387.

(*j*) Empire Settlement Bill, 1928; Children (Provision of Footwear) Bill, 1928-29.

**Reference to standing committees of notices of amendments.**—Notices of amendments to a bill committed to a standing committee given in the House are printed and circulated with the Votes, and stand referred to the committee, even though the Member who gives the notice is not a member of the committee; but such amendments cannot be considered unless they are moved by a member of the committee. Petitions are not received by a standing committee (*k*).

**Consolidation, etc., of bills by standing committees.**—In accordance with instructions given to them by the House, standing committees have consolidated bills committed to them into one bill (*l*), and have extended the provisions of a bill to other parts of the United Kingdom (*m*).

Where two or more bills of the same subject-matter are allotted to the same standing committee, the course of procedure is the same as that followed in a like case by a select committee (*n*) (see p. 612).

**Reporting of bills to the House before their consideration has been concluded.**—It is the duty of standing committees, as of all committees, to give the matters referred to them due and sufficient consideration. Accordingly, the chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill (*o*) nor will he accept a motion for reporting a bill to the House before its consideration has been completed by the committee (*p*), or any other motion which conflicts with the obligations imposed on the committee by the House.

In 1907 at the beginning of the proceedings on the Coal Mines (Eight Hours) Bill, which was an unofficial Member's bill, a minister of the Crown was allowed to move "That the committee do report the bill without amendment to the House." In making the motion he stated that the government were still awaiting the report of a departmental committee which had been appointed to consider the subject, that some weeks would elapse before it reached the government, and that the latter were, therefore, not in a position either to bring in a bill of their own or discuss amendments to the existing bill, and he undertook that, if his motion was agreed to, the government would, as soon as they received the departmental committee's report, draft a bill of their own and introduce it at the earliest possible date. The motion was agreed to, and the committee made a special report to the effect that they were unable to proceed with the bill owing to the inadequate information at their disposal. This precedent has, however, never been regarded as creating a rule. On the contrary, the Speaker said at the time that the practice was one which ought to be very carefully watched, as it might lead to very great abuses (*q*), and in 1913 when he was consulted regarding the case of the Dogs

(*k*) Aliens Bill, H. C. 242, p. 18 (1904).

(*l*) C. J. (1890) 465; *ibid.* (1890-91) 331; *ibid.* (1901) 351; *ibid.* (1903) 296; *ibid.* (1929-30) 369.

(*m*) C. J. (1903) 120.

(*n*) C. J. (1894) 151; *ibid.* (1895) 110; *ibid.* (1896) 339; *ibid.* (1898) 126.

(*o*) Chairman's rulings, Clergy Discipline (Immorality) Bill, *The Times*, May 24, 1892; Dogs Protection Bill, *The Times*, July 24, 1913; Rent Restrictions Bill, Stg. Co. Deb. (1924) 444; Wild Birds Protection Bill, July 7, 1927.

(*p*) Stg. Co. Deb. (1923) Co. A. 49; *ibid.* (1924) 444.

(*q*) *The Times*, April 23, 1907; H. C. 123, p. 4 (1907); C. J. (1907) 131; Parl. Deb. (1907) 173, c. 273.

Protection Bill, he expressed the opinion that a motion that the committee do not proceed further with the consideration of the bill could regularly be made only by the member who was in charge of the bill (*r*).

In 1919 the chairman declined at the beginning of the proceedings on the Compensation for Subsidence Bill to accept from a member who was not in charge of the bill a motion, that the committee should make a special report to the House that it was inadvisable to undertake the task of amending the bill in detail until the proposals of the government upon the Coal Industry Commission had been laid before the House, and the decision of the House taken thereon. (*s*)

If, however, circumstances arise which, in the opinion of the member in charge of a bill, render it inexpedient to proceed further with the consideration of the bill, he may be allowed to move, "That the committee do not proceed further with the consideration of the bill." If the motion is agreed to, the bill is reported to the House, without amendment (*t*), or with such amendments as the committee has made (*u*), together with a special report setting out the facts.

In the case of the Trade Unions and Trade Disputes Bill, 1905, a motion by the member in charge of the bill that the committee should not proceed further with the consideration of the bill was negatived (*a*).

Where an unofficial Member's bill sought to impose a charge on public funds, and the government declined to move a resolution sanctioning the charge, the member in charge of the bill was permitted, at the beginning of the proceedings on the bill, to move that the committee do not proceed with the consideration of the bill (*b*). A similar course was followed where there was no prospect of the consideration of the bill being concluded in sufficient time to enable it to be considered by the House (*c*).

Where a committee has disagreed to the sole effective clause of a bill, and the member in charge of the bill has declined to move that the committee do not proceed further with the bill, a motion to that effect has been accepted from another member (*d*).

In one instance, where a standing committee found itself unable to complete the consideration of a bill in sufficient time to allow of the bill passing through its remaining stages before the end of the session, it negatived the remaining clauses of the bill, and reported the bill, as amended, to the House, making at the same time a special report explaining the course it had pursued and its reasons for so doing (*e*).

In other cases the committee has, upon the motion of the member in charge of the bill, been discharged from further consideration thereof (*f*).

(*r*) *The Times*, July 24, 1913.

(*s*) Stg. Co. Deb. (1919) iv, 316 *et seq.*

(*t*) Rent Restrictions Bill, C. J. (1924) 187.

(*u*) Standing Committee C, Proceedings, Juries (Exemption of Firemen) Bill, H. C. 64, p. 4 (1931-32), C. J. (1931-32) 156; Standing Committee B, Proceedings, Employers' Liability Bill, H. C. 77, p. 4 (1933-34), C. J. (1933-34) 177; Standing Committee A, Proceedings, Annual Holiday Bill, H. C. 76, p. 8 (1936-37), C. J. (1936-37) 149.

(*a*) Standing Committee on Law, Proceedings, H. C. 154, p. 20 (1905).

(*b*) Standing Committee A, Proceedings, Housing of the Working Classes Bill, H. C. 108, p. 6 (1913); *ibid.* H. C. 268, p. 6 (1914).

(*c*) Standing Committee A, Proceedings, Hotels (Ireland) Bill, H. C. 383, p. 5 (1914).

(*d*) Standing Committee B, Proceedings, Playing Fields (Exemption from Rating) Bill, H. C. 127, p. 5 (1929-30), Stg. Co. Deb. (1929-30) Co. A. etc., 2259.

(*e*) C. J. (1912-13) 439.

(*f*) C. J. (1890-91) 376, Parl. Deb. (1891) 354, c. 905; C. J. (1902) 378; *ibid.* (1929-30) 432; *ibid.* (1931-32) 247.

A standing committee has disagreed to all the clauses of a bill, and made a special report to that effect to the House (g).

#### CONSIDERATION OF SUPPLY BY A STANDING COMMITTEE

In 1919 the estimates for the Navy, Army, Air Force, Civil Services and Revenue Departments, including supplementary and additional estimates, but not including votes A and I of the Navy, Army and Air Force, were referred to a standing committee, instead of to the Committee of Supply (h). The estimates were allotted for consideration to the standing committees by the Speaker, and were to be considered by such committees in accordance with the customary form of procedure of the Committee of Supply. Provision was made for the consideration, on motion after notice, of votes by the Committee of Supply instead of by a standing committee, and the Speaker was directed to leave the chair without question put, when notice was given for the consideration of any votes, other than a vote of credit, in Committee of Supply. Resolutions agreed to by a standing committee were reported to the House from time to time, and when reported were proceeded with by the House, as if they had been reported from the Committee of Supply. Notice was required to be given of the votes to be considered on any day in a standing committee, and the powers of the Committee of Selection as to the appointment of additional members and in other respects were assimilated to its powers in regard to a standing committee considering a bill.

#### RECORDS OF PROCEEDINGS IN STANDING COMMITTEES

**Minutes of proceedings.**—All standing committees have leave to print and circulate with the Votes the minutes of their proceedings and any amended clauses of bills committed to them (S.O. No. 47 (6)). The minutes are printed and circulated after each sitting of a committee, and at the conclusion of the consideration of each bill are reported to the House, by whose order they are reprinted and published as a parliamentary paper.

If a committee has begun the consideration of a bill, but has not reported it to the House, as, for instance, where further consideration of a bill is postponed owing to the repeated failure of a quorum to attend (see p. 620), or where the committee has been discharged from further consideration of the bill, the House will order the minutes to be laid before it, and, when presented, will order them to be printed (i).

**Official reports of debates.**—A shorthand note of the debates in standing committees is taken by the official reporters (see p. 252). It is usual to publish an official report of the debates on a government bill, but in the case of an unofficial Member's bill, a report is published only

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(g) C. J. (1919) 232.

(h) C. J. (1919) 39.

(i) C. J. (1926) 418 ; *ibid.* (1930-31) 443. *ibid.* (1931-32) 248.

when the chairman of the committee considers that it is required in the public interest (*j*).

#### 4. JOINT COMMITTEES OF LORDS AND COMMONS

##### APPOINTMENT OF JOINT COMMITTEES

Joint committees composed of an equal number of members of each House are appointed from time to time at the instance of one House or the other.

A joint committee may be appointed to consider a particular matter or bill, or to consider a number of bills, or to consider all matters of a particular class arising during the course of the session or such of them as are referred to the committee by either House (see p. 297). The proposal for the appointment of a joint committee on a matter, or of a standing joint committee, may originate with either House, but a proposal for the committal of a bill to a joint committee can regularly originate only with the House in which the bill is pending.

If either House considers it expedient that a joint committee should be appointed to consider some matter, or that a bill should be committed to a joint committee, it passes a resolution to that effect, and sends a message to the other House to inform it of the resolution and to desire its concurrence. If the other House concurs in the resolution, it sends a message to that effect to the first House, which then appoints a committee of a certain number of members, and sends a message to the other House informing it that it has done so, and requesting the other House to appoint an equal number of its members to join with the committee appointed by the first House. The other House complies with this request, and sends a message to the first House to inform it that it has done so.

It was formerly the practice, when either House desired to refer a matter, or to commit a bill, to a joint committee, for that House to appoint a committee, and send a message to the other House to inform it of the appointment, and to request it to appoint an equal number of its members to join with the committee appointed by the first House (*k*).

This course is not only inconvenient, as in the event of the other House not complying with the request, the order for the appointment of the committee would have to be discharged, but would now be regarded as discourteous to the other House.

A proposal that a specified instruction should be given to the committee, if and when appointed, may be included in a resolution, affirming the expediency of appointing a joint committee (*l*).

In the session of 1937-38 the Lords, after the Commons had agreed to their proposal that a joint committee should be appointed to consider all consolidation bills in that session, communicated a further resolution that it was desirable that in that session all private bills for the exclusive purpose of consolidating the provisions of existing private Acts of Parliament, Acts confirming provisional orders, and special orders should be referred to the proposed committee, and that it should not take into consideration any petition against any such bill, if the petitioners sought to alter the existing law, with which resolution the Commons concurred (*m*).

(*j*) Publications and Debates Reports Committee, 3rd Rep., H. C. 126, p. iii (1931-32).

(*k*) The last two instances, C. J. (1900) 275, 291; *ibid.* (1908) 168, 184, 202.

(*l*) Cf. C. J. (1929-30) 34.

(*m*) C. J. (1937-38) 70.

On two occasions, after the Commons had concurred with the Lords in a resolution as to the expediency of committing certain bills to a joint committee, but before the bills had been so committed, the Lords communicated a further resolution affirming the expediency of committing another bill to the committee to which the bills were to be committed, to which the Commons agreed (*n*).

In the House of Commons a motion for concurring with a resolution communicated by the Lords as to the expediency of appointing a joint committee has been made without notice (*o*).

A reasoned amendment has been proposed to a motion for concurring with the Lords in such a resolution (*p*). Resolutions communicated by one House or the other, proposing that a certain bill, or that certain bills, should be committed to a joint committee, have been disagreed to by the second House (*q*), or no action has been taken thereon (*r*). On two occasions a resolution communicated by the Lords as to the expediency of appointing a joint committee has been concurred in by the Commons without further action being taken by either House (*s*).

Sometimes the second House has appointed a committee of a larger number than the committee appointed by the first House, and has sent a message to the latter requesting it to add another member, or a certain number of members, to its committee, with which request the first House has complied (*t*).

The circumstances and manner in which certain bills under the Private Legislation Procedure (Scotland) Act, 1936, are committed to joint committees are described in Chapter XXXVI.

**Committal of additional bills to joint committees.**—A bill has sometimes been committed to a joint committee on another bill (*u*), or to a joint committee on a matter (*a*). This step is preceded by the passing, by the House in which the bill is pending, of a resolution, which is communicated to, and concurred in by, the other House, affirming the expediency of this course (*b*).

In some instances the Lords, in reply to a proposal on the part of the Commons that a bill should be committed to a joint committee, have made a counter-proposition that it should be committed to a joint committee already appointed to consider another bill or bills, to which the Commons have agreed (*c*).

#### NOMINATION OF MEMBERS OF JOINT COMMITTEES

In both Houses the members who are to serve on a joint committee on a public bill or matter are usually nominated by the House. The

(*n*) C. J. (1908) 170, 180, 198, 245; *ibid.* (1920) 83, 207, 215, 230.

(*o*) H. C. Deb. (1911) 21, c. 1245.

(*p*) C. J. (1918) 165.

(*q*) C. J. (1908) 79, 102; *ibid.* (1928-29) 150, 168; *ibid.* (1930-31) 285, 294.

(*r*) No action taken by the Lords upon a proposal of the Commons, Housing of the Working Classes, 1901; no action taken by the Commons upon proposals of the Lords, Town Improvements (Betterment) 1893; Declaration against Transubstantiation, 1901; Professional Accountants Bill and Rights of Way Bill, 1911.

(*s*) Motor Omnibus and Trolley Vehicle Traffic, C. J. (1914) 394, 403; Indian Affairs, C. J. (1929-30) 117, 143.

(*t*) C. J. (1893-94) 581, 593, 597; *ibid.* (1908) 261, 280, 293; *ibid.* (1918) 169, 179, 197; *ibid.* (1922) 246, 265, 271; *ibid.* (1928) 203, 208, 231.

(*u*) C. J. (1924-25) 209; *ibid.* (1928) 67.

(*a*) C. J. (1892) 248, 341.

(*b*) C. J. (1924-25) 193, 203; *ibid.* (1928) 62, 65.

(*c*) C. J. (1894) 66, 77; *ibid.* (1928-29), 182, 195; L. J. (1928-29) 189, 202, 208.

nomination of the members of joint committees on private bills, provisional order bills or hybrid bills is usually, though not invariably, entrusted by the respective Houses to their Committees of Selection (*d*), and in special cases the nomination of members to serve on a joint committee on a public matter has also been referred by one House or the other to the Committee of Selection (*e*).

When the nomination of the members of a joint committee has been referred to the Committee of Selection, it reports the names of the members nominated to serve on the committee to the House.

The names of the members nominated to serve on a joint committee are not communicated to the other House.

**Alterations in the composition of joint committees.**—Members appointed to serve on joint committees are sometimes discharged and others appointed in their room; and members are sometimes added to fill vacancies caused by death or otherwise. The names of members thus discharged from further attendance on, or added to, joint committees are not communicated to the other House any more than the names of the original members.

One or other House has sometimes added one or more members to its committee, and sent a message to the other House informing it of the fact, and requesting it to make a corresponding addition to its committee, with which request the other House has complied (*f*). In some instances members have been added to joint committees on statute law revision or consolidation bills for the consideration of particular bills (*g*).

In the House of Lords when the Committee of Selection has been directed to propose to the House the names of the lords to serve on a joint committee, that Committee has subsequently proposed to the House that another lord should be substituted for one of the lords originally named (*h*); and where the Commons' members originally appointed to serve on a joint committee were nominated by the Committee of Selection, that Committee has sometimes assumed the power of discharging members so nominated and appointing others in substitution (*i*).

#### POWERS OF JOINT COMMITTEES

Any of the powers which are given to select committees to enable them to discharge the duties of their appointment (see p. 576 *et seq*) may be given to a joint committee. Generally speaking, each House gives identical powers to the members appointed by it to serve on a joint committee. A

(*d*) In the following instances the Commons' members were named by the House:—Railways, etc. (Transfer and Amalgamation) Bills, C. J. (1873) 179; Port of London Bill, C. J. (1908) 184; Ministry of Health Provisional Order (Birkenhead Extension) and (Widnes Extension) Bills, C. J. (1920) 224; Ouse Drainage Bill, C. J. (1927) 219.

(*e*) Channel Tunnel, C. J. (1883) 143; Electric and Cable Railways (Metropolis), L. J. (1892) 114; C. J. (1892) 117; Electric Powers (Protective Clauses), C. J. (1893-94) 288; Municipal Trading, C. J. (1900) 142.

(*f*) L. J. (1892) 122, 128, C. J. (1892) 165, 175; L. J. (1894) 267, 282, C. J. (1894) 328, 336; L. J. (1896) 295, 299, C. J. (1896) 341, 347; L. J. (1928) 157, 169; C. J. (1928) 196, 202; L. J. (1928-29) 79, 97, C. J. (1928-29) 76, 93.

(*g*) L. J. (1894) 62, 67, 181, 193; C. J. (1894) 96, 101, 240, 247; L. J. (1896) 127, 161; C. J. (1896) 167, 197; L. J. (1896) 276, 289; C. J. (1897) 326, 337.

(*h*) L. J. (1932-33) 35, 58.

(*i*) C. J. (1893-94) 329; *ibid.* (1900) 173; *ibid.* (1928) 145, 156.



joint committee has only such authority, and can exercise only such powers, as have been conferred upon it by the two Houses concurrently, nor can the powers of a joint committee be enlarged by an order of one House alone. This rule is, however, subject to an exception in cases where the power conferred is one which is incident to select committees of the one House, but not to committees of the other, as, for example, power to appoint their own chairmen, or to sit notwithstanding the adjournment of the House. For a joint committee to act on an authority which had been delegated to it by one House only would be *ultra vires*.

A joint committee has the same power to administer an oath to witnesses examined before it as a select committee (*j*).

All orders made by the House of Commons on the appointment of a select committee to join with a committee of the House of Lords are communicated to the latter House, irrespective of whether the proposal for the appointment of the committee originated with the Commons or with the Lords, and if after a joint committee has been appointed, the Commons confer any additional powers on their committee, a message is sent to the Lords to inform them of the fact.

**Instructions to joint committees.**—A mandatory instruction can be given to a joint committee only with the concurrence of both Houses. If either House gives a mandatory instruction to a select committee appointed to join with a committee of the other House, but no corresponding instruction is given by the other House to its committee, the instruction, though binding upon the members appointed to serve on the joint committee by the first House, is not binding on the joint committee, as a committee. Permissive instructions stand on the same footing as other orders investing select committees appointed to join with committees of the other House with particular powers (see p. 581).

In order to avoid the embarrassment that the giving of a unilateral instruction would cause, it is desirable, before a mandatory instruction is given by either House to a select committee appointed to join with a committee of the other House, for that House to come to a resolution affirming the expediency of giving the instruction in question to the joint committee, and to communicate it to the other House with a request for the latter's concurrence. Alternatively, the likelihood of the other House concurring in the proposal may be ascertained in a less formal manner by communications between the officers of the respective Houses. The inclusion in the resolution which precedes the appointment of a joint committee (see p. 625) of words affirming the expediency of giving a certain instruction to the committee, when appointed, will not relieve the two Houses from the necessity of giving the instruction to their respective committees when they come to appoint them, as such a resolution neither forms part of the order of reference, nor is mandatory upon the committees.

**Reference of papers to joint committees.**—Reports of or evidence taken before former committees (*k*), petitions relating to the

(*j*) See proceedings of the Joint Committee on Railway, etc. (Transfer and Amalgamation) Bills, 1873, etc., etc.

(*k*) L. J. (1906) 117, C. J. (1873) 178; *ibid.* (1903) 232.

subject of inquiry (*l*), and other papers (*m*) may be referred by either House to a joint committee.

#### SITTINGS AND PROCEDURE OF JOINT COMMITTEES

**Time and place of meeting.**—It is the custom that the Lords should propose the time and place of meeting, whether the proposal for the appointment of the committee originated with the Lords or with the Commons; and the Commons, if they concur in the proposed date, direct their committee to meet the Lords' committee accordingly and send a message to that effect to the Lords. As in the case of a conference between the two Houses, the Commons may, if they see any inconvenience in the place or time proposed by the Lords, disagree to the proposal, and may state to the Lords their reasons for not agreeing thereto. It would then rest with the Lords, if they thought proper, to propose a different time or place, but the Lords would probably not permit the Commons, nor would the Commons claim, the privilege of proposing the place or time of meeting.

Where the proposal for the appointment of a joint committee originated with the Lords, it is usual for them to defer communicating their proposals as to the time and place of meeting until they have been informed by message that the Commons have appointed a committee to join with the committee appointed by the Lords. In 1928, however, they communicated such a proposition together with a request that the Commons should appoint a committee to join with the committee which the Lords had appointed (*n*).

Where the proposal for the appointment of the committee was made by the Commons, the Lords communicate their proposal as to the time and place of meeting when they inform the Commons that they have complied with the latter's request for the appointment of an equal number of Lords to join with the committee appointed by the Commons, or subsequently, as they think proper.

The date of the meeting may be advanced (*o*), or the meeting put off to a later day (*p*), by the same method as that by which the time of the meeting was originally fixed.

In 1881 a joint committee on the Stationery Office was appointed and nominated, and the time and place of the meeting of the committee were fixed, but the committee did not meet (*q*).

**Quorum of a joint committee.**—A joint committee cannot transact business unless a quorum of the members appointed by each House to serve on the committee is present (*r*).

The quorum of the Lords' members of a joint committee is fixed by usage at three. The quorum of the Commons' members is fixed by express order of the House on the appointment of the Committee or subsequently (*s*). If

(*l*) C. J. (1864) 77; *ibid.* (1934-35) 103.

(*m*) C. J. (1872) 375; *ibid.* (1883) 116.

(*n*) C. J. (1928) 124.

(*o*) C. J. (1910) 96.

(*p*) C. J. (1928-29) 151.

(*q*) C. J. (1881) 281, 315, 318, 320.

(*r*) Proceedings of Joint Committees on the Law of Libel Amendment Bill [Lords] and on Suspension of Bills, H. C. 125, p. vii (1927), H. C. 105, p. xix (1928-29).

(*s*) C. J. (1892) 282.

four members are appointed to join with four lords, the quorum of the Commons' members is usually fixed at three. In one instance, however, it was fixed at two (*t*), and where five members were appointed to join with as many lords, the quorum of the Commons' members has been fixed at two (*u*). If no quorum has been fixed by the House of Commons, the committee cannot transact business unless all the Commons' members are present. Late in the session the quorum of the Commons' members of a joint committee has been reduced (*a*).

**Procedure in joint committees.**—The first proceeding of a joint committee is to elect a chairman who may be chosen from among the members appointed to serve on the committee by either House.

Power to agree with the Commons' committee in the appointment of a chairman is expressly given by the Lords to a select committee appointed to join with a committee of the Commons, but the Commons' committee agrees in the appointment of a chairman without receiving express power in that behalf from its House.

The procedure of a joint committee follows the procedure of select committees of the House of Lords when such procedure differs from that of select committees of the House of Commons, whether the chairman is a member of the Commons House or not.

For example, the practice of the House of Lords according to which the chairman of a committee votes like the other members, but has no casting vote, and if the votes are equal, the question is decided in the negative (see p. 584), is followed by a joint committee (*b*).

#### REPORT OF A JOINT COMMITTEE

The report of a joint committee is presented to both Houses. It is ordered to be presented by the chairman to the House to which he belongs, and by a member, selected for the purpose by the committee, to the other House (*c*). When the consideration of a bill by a joint committee has been concluded, the bill is reported to the House in which it originated. In addition to reporting the bill to the House in which it originated, a joint committee frequently makes a report to both Houses *upon* the bill. Where no such report is made, the committee, after ordering the bill to be reported to the House in which it originated, directs one of the members appointed to serve on the committee by the other House to report "accordingly" to that House (*d*).

For examples of unusual forms of reports, see H. L. 71, pp. vi, xxiii–xxv (1923); H. C. 115, p. ii (1923); H. C. 135, p. iv (1923); Ouse Drainage Bill, C. J. (1927) 321, H. C. 113, p. v (1927); Law of Libel Amendment Bill [Lords], C. J. (1927) 376, H. C. 125 (1927).

(*t*) C. J. (1898) 102.

(*u*) C. J. (1906) 92.

(*a*) C. J. (1919) 303.

(*b*) Joint Committees on Channel Tunnel, Proceedings, H. C. 248, p. xlv (1883); on Railway Rates, etc., Provisional Order Bill, Proceedings, H. C. 394, p. xxv (1890–91), etc., etc.

(*c*) Stage Plays (Censorship), H. C. 303, p. xxxviii (1909); High Court of Justice (King's Bench Division) H. C. 333, p. viii (1909), etc., etc.

(*d*) London Passenger Transport Bill, H. L. 90, xlix (1930–31); Consolidation Bills, H. C. 38, p. xiv (1934–35) (Unemployment Insurance Bill [Lords]).

Since 1935 it has been the practice, when both Houses order the report of a joint committee to be printed, to publish the report as a joint House of Lords and House of Commons paper.

#### STANDING JOINT COMMITTEES

A joint committee is appointed in most sessions, "to consider all consolidation bills in the present session" (e).

In the sessions of 1928 and 1928-29 another joint committee was appointed for the consideration of all private bills for the exclusive purpose of consolidating the provisions of existing private acts of parliament (f).

From the session of 1921 to that of 1928-29 a Standing Joint Committee on Indian Affairs was appointed each session. The functions of the committee were at first indicated merely by its name, but from 1923 onwards the resolution which preceded the appointment of the committee affirmed the expediency of appointing a joint committee "to examine and report on any bill or matter referred to them specifically by either House of Parliament, and to consider, with a view to reporting, if necessary, thereon, any matter relating to Indian affairs brought to the notice of the committee by the Secretary of State for India" (g).

#### INTERCOURSE BETWEEN COMMITTEES OF BOTH HOUSES

As an alternative to the appointment of a joint committee, a select committee of either House may be given power to receive any communication which may be made to it from time to time by a committee of the other House upon the same or a cognate subject (h), or to communicate, from time to time, or confer with a committee of the other House (i).

This would seem to be the appropriate course in cases where the privileges or procedure of either House are concerned.

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(e) C. J. (1912-13) 21; *ibid.* (1914) 101; *ibid.* (1914-16) 108, etc., etc.

(f) C. J. (1928) 188; *ibid.* (1928-29) 127.

(g) L. J. (1923) 100; C. J. (1923) 115; L. J. (1924) 88; C. J. (1924) 85, etc., etc. The terms of reference of the India and Burma Orders Committee, a sessional select committee of the Lords, are more limited; the committee is appointed to consider draft orders laid before Parliament under s. 309 of the Government of India Act, 1935, or s. 157 of the Government of Burma Act, 1935.

(h) L. J. (1812-13) 619.

(i) C. J. (1794) 620; L. J. (1861) 13; C. J. (1861) 77.

## CHAPTER XXII

### WITNESSES AND PARLIAMENT

This chapter is mainly devoted to a description of the practice relating to the summons of witnesses before either House or a Committee of the whole House, which is now a matter of rare occurrence.

The procedure governing the attendance of a witness to be examined before a select committee has been described in the preceding chapter (p. 588).

#### MODE OF SECURING ATTENDANCE

##### SUMMONS OF WITNESSES BY THE LORDS

Witnesses summoned to give evidence before the House of Lords or any committee of the whole House are ordered to attend at the bar on a certain day, to be sworn; and they are served with the order of the House, signed by the Clerk of the Parliaments. If a witness be in the custody of a keeper of a prison, the keeper is ordered to bring him up in custody, in the same manner (*a*). If the House have reason to believe that a witness is purposely keeping out of the way to avoid being served with the order, it has been usual to direct that the service of the order at his house shall be deemed good service (*b*). If, after such service of the order, the witness should not attend, he is ordered to be taken into custody (*c*); but the execution of this order is sometimes stayed for a certain time (*d*). If the officers of the House do not succeed in taking the witness into custody by virtue of this order, the last step taken is to address the Crown to issue a proclamation, with a reward for his apprehension (*e*).

##### PEERS, AS WITNESSES, BEFORE THE LORDS

When the evidence of Peers, peeresses or lords of Parliament has been required, the Lord Chancellor has been ordered to write letters to them, desiring their attendance to be examined as witnesses (*f*); but they ordinarily attend and give evidence without any such form.

##### SUMMONS OF WITNESSES BY THE COMMONS

When the attendance of a witness is desired, to be examined at the bar, by the House of Commons, or by a Committee of the whole House,

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(*a*) L. J. (1836) 513, 558.

(*b*) L. J. (1834) 295, 358.

(*c*) L. J. (1834) 400.

(*d*) L. J. (1834) 358.

(*e*) L. J. (1834) 441, 442.

(*f*) L. J. (1834) 144.

he is simply ordered to attend at a stated time (*g*); and the order, signed by the Clerk of the House, is served upon him personally, if he is in or near London; but if he is at a distance, it is forwarded to him by the Serjeant at Arms, either by post, or, in special cases, by a messenger. If the witness does not obey the order for his attendance he may be ordered to be sent for in custody of the Serjeant at Arms, and Mr. Speaker may be ordered to issue his warrant accordingly (*h*); or he may be declared guilty of a breach of privilege, and ordered to be taken into the custody of the Serjeant (*i*). Any person, also, who aids or abets a witness in keeping out of the way, is liable to a similar punishment. When the Serjeant has succeeded in apprehending such persons, they have generally been sent to prison for their offence (*j*).

If a witness whose attendance is desired by the House or by a select committee should be in the custody of the keeper of any prison or sheriff (*k*), the Speaker is ordered to issue his warrant, which is personally served upon the keeper or sheriff by a messenger of the Serjeant at Arms, and by which he is directed to bring the witness in his custody to be examined (*l*).

If a witness should be in custody, by order of the other House, his attendance is secured by a message, desiring that he may attend in the custody of the Black Rod or the Serjeant at Arms, as the case may be, to be examined (*m*).

#### WITNESSES ABSCONDING

When witnesses have absconded, and cannot be taken into custody by the Serjeant-at-arms, addresses have been presented to the Crown for the issue of proclamations with rewards for their apprehension (*n*) (see p. 727).

#### ATTENDANCE OF MEMBERS, HOW SECURED

If the evidence of a Member be desired by the House, or a Committee of the whole House, he is ordered to attend in his place on a certain day (*o*). But when the attendance of a Member as a witness is required before a select committee, the chairman sends to him a written request for his attendance. Pursuant to the resolution of 16 March 1688, "if a Member of the House should refuse, upon being sent to, to come to give evidence or information as a witness to a committee, the committee ought to acquaint the House therewith, and not summon such Member to attend the committee" (*p*).

(*g*) C. J. (1823) 240; *ibid.* (1836) 338.

(*h*) C. J. (1840) 58.

(*i*) C. J. (1851) 48, etc.

(*j*) C. J. (1835) 330, 343, 344.

(*k*) C. J. (1688-93) 476; *ibid.* (1826-7) 464; *ibid.* (1830-1) 795; *ibid.* (1837-8) 210, 353; *ibid.* (1841) 193; *ibid.* (1842) 227; *ibid.* (1844) 89; *ibid.* (1871) 228; *ibid.* (1902) 318.

(*l*) C. J. (1940-41) 9; for the case of a Member in custody, see *ibid.* (1939-40) 227.

(*m*) C. J. (1693-97) 296, 305; *ibid.* (1705-8) 376; *ibid.* (1718-21) 461, 462; *ibid.* (1727-32) 356, 926.

(*n*) C. J. (1819-20) 419; *ibid.* (1826-7) 345, etc.

(*o*) C. J. (1806) 386; *ibid.* (1809) 17; *ibid.* (1810) 21, 30, etc.

(*p*) C. J. (1688-93) 51.

There has been no instance of a Member persisting in a refusal to give evidence ; but Members have been ordered by the House to attend select committees (*q*) (see p. 589).

#### ATTENDANCE OF MEMBERS OF THE OTHER HOUSE

If the attendance of a Peer should be desired, to give evidence before the House, or any committee of the House of Commons (*r*), the House sends a message to the Lords, to request their lordships to give leave to the Peer in question to attend as a witness before the House or committee, as the case may be. If the Peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, if he think fit. If not present, a message is returned on a future day, when the Peer has, in his place, consented to go. Exactly the same form is observed by the Lords, when they desire the attendance of a member of the House of Commons. The attendance of a Member to be examined, when the Lords are sitting on the trial of an impeachment, is secured by means of a message (*s*) ; but if the Lords be sitting as a court of criminal judicature on the trial of a Peer, they order the attendance of a member of the House of Commons without a message (*t*). (For the practice of committees in summoning members of the other House, see p. 590).

#### OFFICERS OF EITHER HOUSE

The same ceremony is maintained between the two Houses in requesting the attendance of officers connected with their respective establishments as is observed by committees (see p. 591).

#### PEERS, NOT BEING LORDS OF PARLIAMENT

Peers who are not lords of Parliament have been ordered by the Commons to attend as witnesses.

Whether a Peer, who is not a lord of Parliament, may be ordered to attend in the same form as a commoner, is a matter upon which the two Houses have not agreed, as, although the Commons have ordered such Peers to attend (*u*), the Lords, in the case of Lord Teignmouth, who had attended as a witness in obedience to an order of the House of Commons (*a*), maintained the privilege of peerage as apart from the privilege of Parliament, by a resolution to that effect, which, however, was not communicated to the Commons (*b*).

#### INQUIRY TO BE PREVIOUSLY ORDERED

Before any such message is sent to the other House, or any witness is otherwise summoned, it is right that the House should previously

(*q*) C. J. (1718-21) 403.

(*r*) C. J. (1826-7) 394 ; *ibid.* (1833) 173, 179.

(*s*) L. J. (1666-75) 84 ; *ibid.* (1696-1701) 33, 747.

(*t*) 3 Hatsell, 21, *n*.

(*u*) 3 May 1779, Earl of Balcarras, C. J. (1778-80) 366.

(*a*) C. J. (1806) 374.

(*b*) L. J. (1805-6) 812 ; see 2 Hatsell, App. 9 ; Colchester, *ii.* 69, 73. 1 June 1825, "The Chancellor, by Mr. Cowper's advice, thought it necessary to have leave given by the House for the Archbishop of Dublin's attendance before the Commons' committee, although, not being on the rota, he has no seat in the House of Peers, or duty to discharge there," Colchester, *iii.* 394.

have directed an inquiry into the matter upon which evidence is sought.

On 31 March 1813, a motion being made for a message to the Lords for the attendance of Lord Moira to give information concerning the Princess of Wales, the Speaker desired the attention of the House to the proceeding as novel and unparliamentary; "the rule being, according to all precedents, not to desire the attendance of witnesses of any sort, excepting upon a matter pending in the House, and which the House had previously resolved to examine." The motion was superseded by reading the order of the day, C. J. (1812-3) 364; Colchester, ii. 434.

## EXAMINATION, EXPENSES AND PROTECTION OF WITNESSES

The various modes of securing the attendance of witnesses to give evidence before either House of Parliament having been described, the mode of examination is next to be considered.

### EXAMINATION OF WITNESSES IN THE LORDS

Lords of Parliament, and Peers not being lords of Parliament, and peeresses, are sworn at the table of the House, by the Lord Chancellor (*c*); and other witnesses who are to be examined by the House, or by a Committee of the whole House, are sworn at the bar. An Irish Peer, being a member of the House of Commons, is sworn at the bar, as a commoner (*d*). The Lords formerly claimed the privilege of being examined upon honour, instead of upon oath (*e*). But this supposed privilege has long since been abandoned, and Peers are everywhere examined upon oath, even in the House of Lords itself. If counsel be engaged in an inquiry at the bar, the witnesses are examined by them, and by any lord who may desire to put questions. When counsel are not engaged, the witnesses are examined by the Lords generally. A lord of Parliament is examined in his place; and peers not being lords of Parliament, and peeresses, have chairs placed for them at the table (*f*).

### OATHS ADMINISTERED BY LORDS' COMMITTEE

By the Parliamentary Witnesses Act, 1858, any committee of the House of Lords may administer an oath to the witnesses before such committee. In accordance with the resolution, 11 June 1857, "that select committees, in future, shall examine witnesses without their having been previously sworn, except in cases in which it may be otherwise ordered by the House" (*g*), witnesses have only been sworn upon inquiries of a special character.

*False evidence.*—Besides the infliction of punishment for perjury, false

(*c*) L. J. (1787-90) 68, 69; *ibid.* (1845) 725; *ibid.* (1854-5) 213.

(*d*) Viscount Palmerston, 16 July 1844.

(*e*) L. J. (1685-91) 18; *ibid.* (1731-36) 136.

(*f*) L. J. (1736-41) 303; see also *ibid.* 100; *ibid.* (1787-90) 69; *ibid.* (1806-7) 172, 189, where the judges of the Court of Justiciary in Scotland had chairs set for them at the bar, to be examined.

(*g*) L. J. (1857) 60; Report on Oaths of Witnesses, L. J. (1857) 39.



evidence before the Lords, prevarication, or other misconduct of a witness, is punishable as a contempt (*h*).

#### ADMINISTRATION OF OATHS BY COMMONS' COMMITTEES

In pursuance of the recommendations of a select committee of 1869, the Parliamentary Witnesses Oaths Act, 1871, was passed, empowering the House of Commons and its committees to administer oaths to witnesses, and attaching to false evidence the penalties of perjury. By Standing Orders Nos. 85 and 86, oaths and affirmations, under the Oaths Act, 1888 (see p. 272), are administered to witnesses, before the House or a Committee of the whole House, by a clerk at the table; and before a select committee, by the chairman, or by the clerk attending the committee. It is not usual, however, for select committees to examine witnesses upon oath, except upon inquiries of a judicial or other special character.

The committee on Foreign Loans in 1875 was the first to examine witnesses upon oath under the Act; they were also so examined by the committees on Privilege (Tower High Level Bridge) and Mr. Goffin's certificate, 1879; Contagious Diseases Acts, 1882; Conduct of a Member, 1941, etc. By an instruction, the committee on London Corporation (Charges of Malversation), 1887, was directed to take evidence on oath, C. J. (1887) 97.

*Contumacious witnesses.*—Those who withhold or give false evidence are treated as being guilty of a breach of privilege (see p. 109).

#### EXAMINATION OF WITNESSES AT THE BAR

When a witness is examined by the House of Commons, or by a Committee of the whole House (*i*), he attends at the bar, which is then kept down. If the witness be not in custody, the mace remains upon the table, when, according to the strict rule of the House, the Speaker should put all the questions to the witness, and Members should only suggest to him the questions which they desire to be put (*k*). But, for the sake of avoiding the repetition of each question, Members are usually permitted to address their questions directly to the witness, which, however, are still supposed to be put through the Speaker (*l*). When a witness is in the custody of the Serjeant at Arms, or is brought from any prison in custody, it is the usual, but not the constant, practice for the Serjeant to stand with the mace at the bar. When the mace is on the Serjeant's shoulder, the Speaker has the sole management; and no Member may speak, or even suggest questions to the Chair (*m*). In such cases, therefore, the questions to be proposed should either be put in writing, by individual Members, or settled upon motions in the House, and given to Mr. Speaker before the prisoner is brought to the bar (*n*). If a question be objected to, or if any difference should arise in regard

(*h*) L. J. (1810-11) 371, etc.

(*i*) 2 Hatsell, 140; but see C. J. (1640-42) 26. For places of witnesses in committees, see p. 591.

(*k*) C. J. (1547-1628) 536.

(*l*) Parl. Deb. (1857) 146, c. 97; *ibid.* (1857) 150, c. 1063.

(*m*) 2 Hatsell, 141, *n*.

(*n*) 2 Hatsell, 142.

to the examination of a witness, he is directed by the Speaker to withdraw, before a motion is made or the matter is considered. In Committee of the whole House, any Member may put questions directly to the witness. Where counsel are engaged, the examination of witnesses is mainly conducted by them, subject to the interposition of questions by Members; and where any question arises in regard to the examination, the parties, counsel and witnesses are directed to withdraw.

## MEMBERS, LORDS OF PARLIAMENT, ETC.

Members of the House are always examined in their places (*o*); and Peers, lords of Parliament, the judges, and the Lord Mayor of London, have chairs placed for them within the bar, and are introduced by the Serjeant at Arms (*p*). Peers sit down covered but rise and answer all questions uncovered. The judges and the Lord Mayor are told by the Speaker that there are chairs to repose themselves upon; which is understood, however, to signify that they may only rest with their hands upon the chair backs (*q*).

## EXPENSES OF WITNESSES

Expenses of witnesses before the House are dealt with in the same way as expenses of witnesses before select committees (see p. 594).

## PROTECTION OF WITNESSES

While each House punishes misconduct with severity, it is careful to protect witnesses from the consequences of their evidence given by order of the House (see pp. 129-30); and on extraordinary occasions, where further protection has been deemed necessary to elicit full disclosures, Acts have been passed to indemnify witnesses from all the penal consequences of their testimony (*r*).

## EVIDENCE BEFORE THE COURTS AS TO PROCEEDINGS IN PARLIAMENT

The practice of the Commons regarding evidence sought for outside the walls of Parliament touching proceedings that have occurred therein is regulated by the resolution of session 1818, which directs that no clerk or officer of the House, or shorthand writer employed to take minutes of evidence before this House, or any committee thereof, shall give evidence elsewhere, in respect of any proceedings or examination had at the bar, or before any committee of the House, without the special leave of the House (*s*).

(*o*) "Agreed that Members ought not to be brought to the bar unless they are accused of any crime," C. J. (1688-93) 46. On 12 January 1768, Wilkes, being brought to the bar in custody, objected that he could not appear there without having taken the oaths; but his objection was overruled.

(*p*) The same forms are observed when a peer desires to address the House, as in the case of Viscount Melville, 11 June 1805, Parl. Deb. (1805) 5 c. 250; and Duke of Wellington, 1 July 1814, *ibid.* (1813-14) 28, c. 489; Abbot's Speeches, 84; Colchester ii. 6-8.

(*q*) 2 Hatsell, 148, where all these forms are minutely described.

(*r*) Election Compromises, 1842, 5 & 6 Vict. c. 31; Sudbury Disfranchisement, 1843, 6 & 7 Vict. c. 11; Gaming Transactions, 1844, 7 & 8 Vict. c. 7.

(*s*) C. J. (1818) 389; Parl. Deb. (1828) 18, cc. 968-974.

Under s. 24 of the Parliamentary Elections Act, 1868, the shorthand writer of the House of Commons shall attend to take notes of the evidence before the election judge. An order of the House is not required to enable the shorthand writer who has attended a trial of an election petition to give evidence thereon elsewhere, as the trial is not a proceeding of the House (Private ruling, 7 February 1873).

**Leave for production in a court of law of evidence given before the House or a committee.**—Accordingly parties to a suit who desire to produce such evidence, or any other document in the custody of officers of the House, in a court of law, petition the House, praying that the proper officer may attend, and produce it; and the term "proper officer" includes an official shorthand writer (see p. 232). The motion for leave may be moved without previous notice (see p. 373) (*t*). During the recess, however, it has been the practice for the Speaker, in order to prevent delays in the administration of justice, to allow the production of minutes of evidence and other documents, on the application of the parties to a private suit. But should the suit involve any question of privilege, especially the privilege of a witness, or should the production of the document appear, on other grounds, to be a subject for the discretion of the House itself, he will decline to grant the required authority. During a dissolution the Clerk of the House sanctions the production of documents, following the principle adopted by the Speaker.

#### EVIDENCE OF MEMBERS AS TO PROCEEDINGS IN PARLIAMENT

It has been held by the courts that the evidence of Members of proceedings in the House of Commons is not to be received without the permission of the House, unless they desire to give it (*u*); and, according to the usage of Parliament, no Member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by leave of the House of which he is a Member (*a*).

(*t*) C. J. (1851) 212, 277; *ibid.* (1852) 291, etc.

(*u*) Chubb v. Salomons, 3 Car. & Kir. 75.

(*a*) Parl. Deb. (1828), 18, c. 968-974.

## CHAPTER XXIII

### FINANCIAL PROCEDURE—INTRODUCTORY

#### GENERAL PLAN OF CHAPTERS ON FINANCE

This chapter is intended to set out the general constitutional position and the cycle of the financial business of a year. The next chapter will deal with general rules of financial procedure ; then will follow chapters on the Committee of Supply, Financial Resolutions, the Committee of Ways and Means, and finally a chapter on the House of Lords and Charges.

#### GENERAL CONSTITUTIONAL POSITION

The Sovereign, being the executive power, is charged with the management of all the revenue of the state, and with all payments for the public service. The Crown, therefore, acting with the advice of its responsible ministers, makes known to the Commons the pecuniary necessities of the government ; the Commons, in return, grant such aids or supplies as are required to satisfy these demands ; and they provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which they have granted. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant : but the Commons do not vote money unless it be required by the Crown ; nor do they impose or augment taxes, unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers (see p. 653).

The demand by the Crown for grants of aid and supply for the service of each financial year is made in the speech from the throne at the opening of Parliament. The sovereign addresses the Commons and acquaints them that estimates will be laid before them of the amount that will be required. Further demands may be made during the progress of the session by messages from the Crown desiring pecuniary aid (see p. 684), by a demand for a vote of credit (see p. 683), or by the presentation of an estimate. The form in which the Commons vote those supplies is consequently a resolution that each sum " be granted to his Majesty " ; nor is a grant of supply, even when endowed with the force of law, available for use until the sovereign puts it at the disposal of the treasury by a royal order under the sign manual. (H. C. 366 (1868-9) part ii, p. 651).

#### CYCLE OF FINANCIAL BUSINESS

The financial business for any given year falls into three fairly distinct parts :—

1. Before the commencement of the financial year in question ;
2. During the financial year ; and
3. After the end of the financial year.

##### I. BEFORE THE COMMENCEMENT OF THE FINANCIAL YEAR

The financial year begins on 1st April, and before that date provision must be made for carrying on the duties of government until such time as Supply can be fully voted.

When in 1833 the date of the commencement of the financial year was changed from 1 January to 1 April, it was in the hope that the House of Commons would be able to vote all Supply before that date, and so avoid "votes on account" (see p. 675). This hope proved ill-founded, and votes on account are now a recognized part of the business of the financial year.

It is necessary to move the Speaker out of the chair on the three Defence Services, and for votes for those services to be obtained (see 677) before the 31 March. The vote on account for the Civil and Revenue Departments (see p. 675) has also to be taken before the commencement of the financial year. Two of the twenty allotted days (see p. 686) must be, and a third usually is, devoted to this preliminary business. When these votes have been reported to the House, resolutions of the Committee of Ways and Means (see p. 707) authorising the issue of the sums voted in Supply are agreed to, and a Consolidated Fund Bill (the "March Consolidated Fund Bill") is brought in.

The Treasury, unless otherwise authorized, has no power to make an issue from the Consolidated Fund of sums granted to the departments unless such grants have been appropriated by statute to the service and object for which they are destined. The introduction of the Appropriation Bill cannot, however, take place until all the grants have been voted for the service of the current year. A more prompt issue must therefore be made of the money granted from time to time for the current service of the Crown. For this purpose Consolidated Fund Bills are passed during each session, empowering the Treasury to issue out of that fund for the service of departments for which grants have been voted such sums as they may require, in anticipation of the full statutory sanction conferred by the Appropriation Act. The first Consolidated Fund Bill must receive the Royal Assent in time to allow of the necessary issues being made available upon 1 April.

Under section 2(1) of the Public Accounts and Charges Act, 1891, sums authorized by a Consolidated Fund Act to be issued from the Consolidated Fund can be used for any service for which a vote has been obtained in Committee of Supply and agreed to by the House since the passing of that Act.

The March Consolidated Fund Bill gives authority for the issue not only of sums for the service of the year about to begin, but also for that of the year just ending (see p. 678). Upon receipt of the order from the Sovereign (*a*), which gives final validity to a supply grant, the Treasury makes the issues, to meet those grants, out of the Consolidated Fund.

In session 1883 the only supply for the ensuing financial year on which the ways and means resolutions for the Consolidated Fund (No. 1) Bill could be based (see p. 707) was that for the army, while in 1889 no "vote on account" for the civil services, in 1905 no vote for the army, and in 1913 no vote for the navy had been agreed to before the introduction of the bill. Votes for each of the services not included in the supply upon which the ways and means resolutions were based were agreed to in each year before 31 March, which enabled the Treasury to issue for these services part of the money placed at its disposal by the Consolidated Fund (No. 1) Bills. (See Debate on Consolidated Fund (No. 1) Bill, Parl. Deb. (1905) 143, c. 1225, 1395).

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(a) The Royal Order (see p. 639), which is the final authority for the issue of a Supply grant, is checked by the independent Comptroller General to see that the amount, thereunder issued, does not exceed the amount of the grants out of the Ways and Means appropriated by Parliament to the service of the year.

Further Consolidated Fund Bills are passed during the progress of the session at such times as may be requisite for the maintenance of the public service. (C. J. (1898) 398; *ibid.* (1901) 282; *ibid.* (1905) 312). The amount of the "vote on account" granted annually since 1896 and the power of the Treasury to use for any service, for which a vote has been agreed to by the House, the issues authorized to be made out of the Consolidated Fund under the Consolidated Fund (No. 1) Act of each session have rendered unnecessary as a rule Consolidated Fund Bills after 1 April, in anticipation of the Appropriation Act (Parl. Deb. (1904) 137, c. 213; *ibid.* (1905) 143, c. 1219).

## 2. BUSINESS DONE DURING THE FINANCIAL YEAR

Soon after the commencement of the financial year the Chancellor of the Exchequer opens his Budget in Committee of Ways and Means (see p. 753).

Before estimating what revenue he requires for the service of the year, the Chancellor of the Exchequer first reviews the out-turn of the previous financial year, and then discloses the expenditure on the Consolidated Fund Services for the current year. Consolidated Fund Services consist of expenditure such as that for the service of the national debt, the civil list, the salaries of judges, the Speaker, etc., which are paid directly under the authority of a statute, and are distinct from the services paid for out of moneys provided by Parliament which have to be annually included in the estimates.

The Finance Bill (see p. 756) is founded on the resolutions of the Committee of Ways and Means passed after the Chancellor's opening statement. Seventeen further "allotted days" (see p. 686) have to be devoted to the business of Supply before 5 August.

For the procedure on winding up the Committee of Supply, see p. 708.

**Estimates Committee.**—For the past thirty years a select committee has been appointed each session for the consideration of the details of expenditure. The Estimates are thus being considered simultaneously by the Committee of Supply and by a select committee. The work of the former deals mainly with general policy and administration, the detail being left to the select Committee which is specifically debarred from matters of policy.

The reference of the estimates to the consideration of a select committee has become a regular feature of Commons procedure since 1912, with the exception of the war years 1914–20 and from 1939 onwards. In these periods—from 1917 to 1920 and from 1939 onwards—the examination of war expenditure was entrusted to select committees on National Expenditure (see p. 642).

The Estimates Committee was empowered to examine any of the estimates presented to the House, to suggest the form in which the estimates might be presented, and to report what economies, consistent with the policy implied in the estimates, might be effected (e.g. C. J. (1938–39) 24).

In going some way to meet the view expressed by the Estimates Committee of 1926 in their First Report (H. C. 59 (1926)) that they should be assisted by a skilled parliamentary officer, the Government announced on 15 July 1926 that in future a Treasury witness should attend the meetings of the Committee and assist them as far as possible. Accordingly since 1927 the Committee has had the assistance of one or more Treasury officials

who attend the Committee in an advisory capacity. (The view that the Estimates Committee should be assisted by a technical staff independent of the Treasury was again expressed by the Select Committee on Procedure in 1932, H. C. 129, para. 10 (1932-33).) After each report the Treasury has published a minute dealing with the recommendations; this minute is printed as an appendix to the next report of the Estimates Committee, usually with comments on the Treasury's action; and thus a certain continuity is maintained between one report and the next (e.g. H. C. 81 and 126 (1927)).

For the reference of estimates to the consideration of a standing committee, see p. 624.

**National Expenditure Committee.**—The Select Committees on National Expenditure of Sessions 1939-40 to 1943-44 were appointed to examine the current expenditure defrayed out of moneys provided by Parliament for the defence services, for civil defence, and for other services directly connected with the war, and to report what, if any, economies consistent with the execution of the policy decided by the Government might be effected therein. As a result of the eleventh report of the Committee of 1943-44, the order of reference of the Committee of 1944-45 was altered slightly, in order to remove doubts as to the scope of the Committee's inquiry; and the revised order required them to examine "matters that are the subject of current expenditure."

The Committee were given power to appoint sub-committees, and to refer to them any of the matters referred to the Committee. The number of the investigating sub-committees so appointed varied from four to eight. Power was also given to appoint a Co-ordinating Sub-Committee to review, co-ordinate and direct the work of the investigating sub-committees and to refer to such sub-committee any of the matters referred to the Committee, as well as itself to conduct such investigations as might be thought suitable. All sub-committees were given the powers given to the Committee, to send for persons, papers and records; to sit notwithstanding any adjournment of the House; and to adjourn from place to place. The reports of the Committees show how extensively this last power was used during the conduct of inquiries.

After a special report of the Committee of 1939-40, power was given, in cases where considerations of national security precluded the publishing of certain recommendations and of the arguments on which they were based, to address a memorandum to the Prime Minister for the consideration of the War Cabinet, provided that the Committee reported to the House on every occasion on which this power was exercised. This power was exercised on ten occasions (b).

In order to facilitate the work of dealing with the many inquiries made of departments by the Committee and its sub-committees, each department concerned appointed one of its own officers to act as a liaison officer through whom all communications between the Committee and the department passed. It was the usual practice for these officers to attend those meetings of the Committee or its sub-committees at which official evidence from their department was being tendered.

For reasons of national security, the Committees appointed during the six sessions from 1939 to 1945 invariably sat in private and they did not report their evidence to the House.

The practice was established whereby the departments affected by the

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(b) C. J. (1939-40) 148, etc.

recommendations in the Committee's reports submitted memoranda thereon to the Committee; these replies were periodically reported to the House, either in the same or in a following session. The Prime Minister also supplied the Committee, for their confidential information, with replies to recommendations contained in the memoranda addressed to him under the special powers described above.

**Final Steps in the Financial Year.**—On the conclusion of the Committee of Supply, Ways and Means resolutions authorising the issue of the total sums granted in Supply are passed (see p. 707), and on these the Appropriation Bill (see p. 710) is introduced.

As they are acts of Parliament, the Lords, of course, pass all Consolidated Fund, Appropriation and Finance Bills, but that is the extent of their participation in the financial business of a session.

The Appropriation Act is usually passed just before the summer recess; and in the autumn, or more probably after Christmas, a number of supplementary estimates will be presented; these must be considered before the 31st March (see p. 678), and as the money must be made available to the spending departments before that date, they are included in the "March Consolidated Fund Bill" referred to on p. 709.

### 3. BUSINESS DONE AFTER THE END OF THE FINANCIAL YEAR

After the conclusion of the financial year the first action required from Parliament to round off the business for that year is to appropriate the autumn and spring supplementary estimates referred to above. This is done in the Appropriation Bill passed in the following August. But as soon as the financial year is ended the preparation of accounts begins. On the evening of the 31st March the Treasury issues the totals of income and expenditure. As has already been mentioned, the Chancellor of the Exchequer refers, in his Budget statement, to these figures. But these are but preliminary and unaudited accounts.

**The Comptroller and Auditor-General.**—The Comptroller and Auditor-General, on whom is placed the duty of auditing the national accounts, is a permanent official appointed by the Crown under the Exchequer and Audit Departments Act, 1866. He is, however, independent of the Executive because his salary is paid out of the Consolidated Fund, and he can only be dismissed by an address to the Crown passed by both Houses of Parliament.

**Accounts.**—The first audited account, "The Public Income and Expenditure Account," is presented in April or May and shows the main items of income and expenditure and surplus or deficit for the year. In the autumn appear the "Finance Accounts," which are not audited, but contain considerable detail of revenue and expenditure on Consolidated Fund Services, and much miscellaneous information about the national debt. It is not till the January following the end of the financial year that the Appropriation Accounts showing the expenditure on Supply services in great detail are presented, together with the reports from the Comptroller and Auditor-General upon them.

As the result of his audit, the Comptroller and Auditor-General reports to Parliament (Exchequer and Audit Departments Acts 1866 and 1921) regarding the application and the appropriation of all grants, and such other



matters as are in his judgment connected therewith. These reports regarding the application and appropriation of the grants form the basis of the work of the Public Accounts Committee.

**Public Accounts Committee.**—The Committee of Public Accounts is appointed under S.O. No. 74 "for the examination of the accounts, showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the Committee may think fit"; the number of members of the Committee is fixed by the same standing order at fifteen. They are nominated at the commencement of each session. The main function of this Committee is to ascertain that the parliamentary grants for each financial year, including supplementary grants, have been applied to the object which Parliament prescribed, and to recheck the official audit created by the Exchequer and Audit Departments Act, 1866. For this purpose they have the assistance of the Comptroller and Auditor-General in his capacity as an officer of the House of Commons.

The Committee also scrutinizes the causes which have led to any excesses over parliamentary grants, and the application of savings on the grants made to the three Service Departments. The researches made by the Committee, and the publication of their reports, ensure, on behalf of the House of Commons, an effectual examination of the public accounts.

The Committee was appointed for the first time in 1861 (C. J. (1861) 130).

In February or March following the end of the financial year under consideration, the House will be called upon to consider any excess votes that may have been incurred.

An "excess vote" is the result of a department spending more money than has been voted for its service. This is a financial sin, and the department in question, having had to answer for its conduct to the Treasury and appeared before the Public Accounts Committee, has then to get absolution from the Committee of Supply. If the Committee grants the money necessary to meet the excess, the sum so granted is included in the "March Consolidated Fund Bill" referred to on p. 709.

Two further actions are required by the House in the summer (sixteen months after the close of the financial year).

**Navy, Army and Air Expenditure.**—A committee of the whole House, known as the Navy, Army and Air Expenditure Committee, is set up every session to consider the application by the three service departments, on the temporary authorization of the Treasury (under what is known as the power of "*virement*" of surpluses on some of their grants to meet deficiencies on other grants (see pp. 677, 710).

Earlier in the session the Treasury, in accordance with statutory provision (see Exchequer and Audit Departments Acts, 1866 and 1921), will have presented a copy of the Appropriation Accounts for each defence service, with the reports of the Comptroller and Auditor-General thereon, and these accounts and reports are referred to the Committee of the whole House when it is set up (e.g. C. J. (1929-30) 177, 185, 456, 460).

After the Committee has agreed to resolutions sanctioning the application of the surpluses of each defence service, as shown in the accounts, which are entered in full in the Journals, the Committee's work is at an end; the House agrees with its resolutions and a clause based on the resolutions is inserted in the annual Appropriation Act to confer the sanction of Parliament on the method of application of the service grants.

In the Navy, Army and Air Expenditure Committee, criticism of the system of applying surpluses has been ruled out of order (Parl. Deb. (1906) 162, c. 574).

Finally the Appropriation Act appropriates both the Excess Votes and the Navy, Army and Air Expenditure. This concludes the business of winding up a financial year.

**Balances held by the Paymaster-General.**—One further piece of information is however provided to the House a year later, that is, two and a quarter years after the finish of the financial year in question. This is the "Comparison of audited expenditure with Exchequer issues," published as Appendix I of every report from the Committee of Public Accounts. Its importance lies in the disclosure of the increase or decrease in the balances in the hands of the Paymaster-General—money, which having been issued from the Exchequer and not yet being in the accounts, is "free money" at the disposal of the executive. In fact the increase or decrease in these balances forms a very small percentage of the audited national expenditure.

## MISCELLANEOUS FINANCIAL BUSINESS

### 1. POST OFFICE CONTRACTS

It may be mentioned in conclusion, that, as a check upon corrupt or improvident contracts, it is provided by standing orders Nos. 71-73, that in every contract for packet and telegraphic services beyond sea, a condition should be inserted, that the contract shall not be binding until it has been approved by a resolution of the House. Every such contract is to be forthwith laid upon the table, if Parliament be sitting, or otherwise within fourteen days after it assembles, with a copy of a Treasury minute setting forth the grounds upon which the contract was authorized (c). No such contract is to be confirmed, nor power given to the government to enter into agreements, by which obligations at the public charge are undertaken, by any private Act. All such contracts are, accordingly, either approved by resolutions of the House (d), or where necessary confirmed by Public Bill.

### 2. GREENWICH HOSPITAL

As under the Greenwich Hospital Act, 1885, the expenditure on this hospital is defrayed out of the revenues thereof, a statement showing, under the proper heads, the income and expenditure of the hospital, is every year submitted, by a resolution, to the consideration and approval of the House (e), and a similar course has been followed when expenditure in excess of the approved estimate has been incurred (f).

### 3. INDIAN REVENUE GUARANTEES

The Government of India Act, 1915, s. 22, which re-enacts section 55 of the Act of 1858, prescribes that the revenues of India shall not be

(c) On 16 June 1873, in the case of the Cape of Good Hope and Zanzibar mail contract, notice being taken that a Treasury letter had been presented instead of a Treasury minute, the order for resuming the adjourned debate on the contract was discharged; and amended papers were presented, C. J. (1873) 280; Parl. Deb. (1873) 216, c. 1000.

(d) Thus on 29 June 1936 the House resolved that the Post Office contract with the L.M.S. Railway Company for a new mail service between Ardrossan and the Isle of Arran, a copy of which contract was presented to the House on 24 June, be approved, C. J. (1935-36) p. 301.

(e) C. J. (1890-1) 518.

(f) C. J. (1921) 181, 211.

applied to expenditure beyond the frontiers, without the consent of both Houses of Parliament; and, if the resolution whereby this consent is given follows the directions of the Act, and is unaccompanied by a guarantee upon the exchequer, the resolution is exempt from the operation of the standing orders and can be considered by the House of Lords without a previous communication from the Commons (g).

The resolution, however, which, in 1867, was submitted to Parliament to empower the employment of Indian native forces in the Abyssinian War, was accompanied by a provision that the contingent charges, which might arise out of the expedition, should be defrayed by the Exchequer. The resolution approving that application of the Indian revenues, as it was accompanied by that proviso, was consequently moved upon recommendation from the Crown, and was referred to a committee; and as the initiative in the imposition of charges rests with the Commons, the resolution was subsequently communicated to the Lords, and their concurrence obtained (h). When a resolution authorizing the employment out of India of troops, chargeable on Indian revenues, has created only a provisional liability, which could not arise unless the contingency creating such liability took place, and a grant was voted by Parliament towards the expenses of the expedition, it has been held that the resolution was not brought by that proviso within the scope of the standing orders. Such a resolution has been considered therefore with the Speaker in the chair, and submitted directly to the Lords without previous communication from the Commons (i).

When all the provisions of the Government of India Act, 1935, are brought into effect following the proclaiming by his Majesty of a date establishing the Federation therein described, the whole of the 1915 Act, under which the above procedure is required, will be repealed. (See Section 478 and Schedule 16 of the 1935 Act.)

Although there were several "expeditions beyond the frontiers" of India in the war of 1939-45, the cost of these was borne by the Imperial Exchequer on a vote of credit, and no resolution was moved for such expenditure.

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(g) Afghan War, L. J. (1878-9) 13, C. J. (1878-9) 23; Egyptian Expedition, L. J. (1882) 351, C. J. (1882) 416; Burmese Expedition, L. J. (1886) 53, C. J. (1886) 57; Thibet Political Mission, L. J. (1904) 109, C. J. (1904) 120; contribution towards cost of the war, L. J. (1917-18) 58, C. J. (1917-18) 41.

(h) C. J. (1867-8) 15, 18, 26; L. J. (1867-8) 14.

(i) L. J. (1844-5) 104, C. J. (1844-5) 89; L. J. (1914) 417, C. J. (1914) 463; L. J. (1914-16) 20, C. J. (1914-16) 28.

## CHAPTER XXIV

# GENERAL RULES OF FINANCIAL PROCEDURE

### SCOPE OF FINANCIAL PROCEDURE

Financial procedure is primarily concerned with the authorization of public expenditure and taxation and with the relations which exist in these matters between the King and Parliament and between the Lords and the Commons. But not all forms of public expenditure and receipt fall within the scope of financial procedure. Some are excluded from it altogether. Others fall within it for some purposes and outside it for others. These limitations are best indicated with the help of an expression used in a technical sense, namely, "public charge" or "charge," as it is called in ordinary usage. As financial procedure is largely concerned with "charges," a definition of the main uses of the term "charge" is essential. There are two main kinds of charges : "charges upon the public revenue" and "charges upon the people."

#### CHARGES UPON THE PUBLIC REVENUE

A charge "upon the public revenue" or "upon public funds" now means an obligation to make a payment out of the Exchequer, *i.e.* an item of national expenditure. In relation to expenditure, financial procedure is, with two exceptions mentioned below, exclusively concerned with charges payable out of the Exchequer. Charges upon the public revenue are divided into *charges payable out of moneys to be provided by Parliament*, *i.e.* moneys voted year by year (a) in response to demands presented in the form of estimates ; and *charges upon the Consolidated Fund*, *i.e.* moneys payable (for the most part annually) out of the Exchequer under statute without further parliamentary authority. In addition—and this is the first of the two exceptions just mentioned—charges upon the revenues of India are for certain purposes brought by S.O. No. 67 within the scope of financial procedure as though they were charges payable out of the Exchequer. Finally, under S.O. No. 64, "the releasing or compounding of any sum of money owing to the Crown" (*i.e.* the writing off of any portion of a debt owed to the Exchequer) is treated as a charge.

#### CHARGES UPON THE PEOPLE

The term "charge upon the people" is now primarily taken to connote any impost in the nature of a tax or customs duty the proceeds of which are payable into the Exchequer (see pp. 754-5). But in a secondary sense it also includes any burden upon local rates. Financial procedure is

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(a) Either form of charge upon the public revenue may, of course, be a single payment

concerned with the imposition of burdens upon local rates because they fall within the sphere of public finance with respect to which the Commons claim privilege against the Lords (see p. 764), and because they may neither be imposed, nor increased, nor their incidence extended by amendments to bills except in committee (see p. 539). In other respects the rules of financial procedure are not applied to local rates.

The question has been raised in the House of Commons whether the transfer of *property* to the Crown falls within the connotation of "charges upon the people." On this point the Speaker has ruled that the financial standing orders are concerned with *monetary* charges, and that precedents exist for the transference of property to the Crown without any resolution preceding a bill, H. C. Deb. (1933-34) 291, c. 213.

#### LIMITATION OF THE SCOPE OF FINANCIAL PROCEDURE

The rules of financial procedure are not applied to funds or levies which, though they may be public in the sense that they are regulated by statute or publicly administered, exist for sectional rather than national purposes. Examples of such funds and levies are Church revenues, tithes, Queen Anne's Bounty (see p. 729); funds created within an industry for purposes beneficial to the industry, and the contributions by which such funds are raised (see p. 748); and licences and fees charged by departments as payments for services rendered to the public (see p. 749). To these may be added local rates with the qualifications referred to in the preceding paragraph. All these matters are treated as outside the category of charges and as exempt from the rules of financial procedure set out below.

#### ARRANGEMENT OF CHAPTER

The purpose of this chapter is to explain the general rules of procedure which are common to all the various kinds of financial business; to trace briefly the development of these rules, showing the part that has been played in the formation of modern financial procedure by ancient practice and by the standing orders respectively; and, in particular, to show the progressive limitation of the power of amending financial measures, caused by the development of the machinery established by the House of Commons for safeguarding the financial initiative of the Crown.

#### GENERAL RULES OF FINANCIAL PROCEDURE OF THE COMMONS

The general rules which govern the financial procedure of the House of Commons are based upon the constitutional relations summarized in the previous chapter (see p. 639) and upon practice and standing orders. Though their application to the three main classes of financial business, namely, ordinary annual expenditure, expenditure for novel purposes (*b*), and taxation, involves minor variations appropriate to each

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(*b*) The term "expenditure for novel purposes" is used here as a label for expenditure initiated by financial resolutions with the King's recommendation—the subject-matter of Chapter XXVI. "Novel" purposes are purposes which require to be authorized by specific legislation; and are to be distinguished from "new" services and matters which do not require to be so authorized (see p. 679).

case, which will be dealt with in their place below, these rules are capable of being generally stated as follows :

**Rule 1. Legislative authorization and appropriation of charges.**—A charge does not acquire full validity until authorized by legislation ; it must originate in the House of Commons and be appropriated in the same session.

**Rule 2. The financial initiative of the Crown.**—A charge cannot be taken into consideration unless it is demanded by the Crown or recommended from the Crown.

**Rule 3. Preliminary consideration in committee.**—A charge must be first considered in a committee of the whole House, and the resolution of the committee, when agreed to by the House, forms a necessary preliminary to the bill or clause by which the charge is authorized.

**Rule 4. Interval between stages of financial business.**—Not more than one stage of a charging resolution or of a bill founded upon such a resolution can be taken on the same day. (Several exceptions have been made to this rule by recent standing orders.)

## ANCIENT USAGE AND THE STANDING ORDERS

The financial procedure of the House of Commons is regulated to a certain extent by standing orders, but to a far greater extent on unformulated ancient usage. It will be convenient to begin by showing to what extent and in relation to what kinds of financial business the general rules of financial procedure are based on ancient usage and on standing orders, respectively.

Broadly stated, the procedure in respect of supply and ways and means, that is to say, in voting expenditure on estimates and in providing revenue, is based on ancient usage ; while the procedure in respect of novel expenditure, initiated by financial resolutions, is based on standing orders.

### ANCIENT USAGE

Ancient usage which survives in modern procedure is called " practice," to distinguish it from that part of procedure which is based on standing orders. It will be convenient to use the term " practice " in this chapter, which is concerned with financial usage, ancient indeed, but still operative. Financial practice, it must be remembered, had developed its main features before cabinet government was instituted, at a period when the national revenue was still in literal fact the royal revenue, when the King was only partially dependent on parliamentary grants, when there was as yet no Consolidated Fund, and when the financial function of the Commons was not to grant a specified sum of money but to grant the right to levy a tax. This historical reminder is necessary to explain features of modern financial practice which are otherwise puzzling.

### THE FINANCIAL STANDING ORDERS

The standing orders which regulate the financial procedure of the House of Commons are the so-called " public money " standing orders,

at present numbered 63 to 70. The most important of these are the two earliest, dating from the beginning of the eighteenth century, Nos. 63 and 64, which affirm the pre-existing practice of the House with regard to the initiation of charges *by the Crown and in Committee of the whole House*. Owing to the great constitutional and administrative changes which have taken place since these standing orders were passed, they are now applied in a manner and to objects very different from those which were originally intended (see pp. 655-6). Of the other major financial standing orders, Nos. 66 and 67 are comparatively modern, while No. 68 is a re-statement of an old rule of practice, amended so as to apply to modern conditions. All the "public money" standing orders, with the exception of No. 70, are concerned with expenditure otherwise than by estimate. They are examined in detail in the sections which follow.

## THE BASIS OF THE GENERAL RULES OF FINANCIAL PROCEDURE

In this section an examination is made of the general rules of procedure in the order in which they are set out on p. 649 so as to show how far each is based on ancient usage and how far on standing orders. In the course of this survey each rule will also be considered from the standpoint of its application to (1) supply (ordinary annual expenditure), and ways and means (taxation and the provision of revenue); and (2) financial resolutions (expenditure for novel purposes).

### RULE I. LEGISLATIVE AUTHORIZATION AND APPROPRIATION OF CHARGES

**(1) In respect of supply and ways and means.**—The rule that legislation is necessary to sanction grants of supply and ways and means is based on ancient constitutional usage. This rule is subject to statutory exceptions, mentioned below, whereby in certain cases provisional validity, and in other cases final validity, is given to resolutions of the House of Commons.

Procedure by bill for the purpose of granting supply to the King replaced a simple vote of the House of Commons in the fourteenth century. But the Commons were careful from the first to claim predominant rights—privilege—in such bills, which were called "bills of aids and supplies." The right of the Lords to initiate such bills was denied; their power over them was reduced to the simple giving or withholding of assent; and a special enacting formula was employed for bills of aids and supplies which explicitly asserted the rights of the Commons. This formula is still used for the two modern classes of bills into which the old bills of aids and supplies have been differentiated, namely, Consolidated Fund and Appropriation Bills on the one hand, and, on the other, bills imposing taxation, the principal of which are the annual Finance Bills (c).

Both these classes of bills originate in Committee of Ways and Means, and cannot be amended by the Lords without infringement of privilege. The modern procedure in respect of privilege arising out of the application of the bill form to the grant of supply is dealt with in Chapter XXVIII.

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(c) In order to mark the fact that the grants which these bills embody are by the free gift of the Commons the name of the Chairman of Ways and Means precedes the name of any Minister in the list of Members ordered to "prepare and bring in" such a bill.

Although legislation is needed to give complete sanction to parliamentary grants, a temporary and provisional validity is given to resolutions of the House of Commons granting supply by the Public Accounts and Charges Act, 1891, s. 2 (1), and to resolutions of the Committee of Ways and Means imposing taxation by the Provisional Collection of Taxes Act, 1913 (sec p. 755). Both these statutes legitimized a pre-existing procedure which was founded on practice.

Legislative sanction is not required for the imposition of customs duties under powers conferred by the Import Duties Act of 1932 and other Acts nor for new purchase tax orders imposed under the general authority given in the Finance (No. 2) Act, 1940. The imposition of such duties and purchase tax orders is finally (not provisionally) authorized by a simple resolution of the House of Commons.

*The Appropriation of Expenditure.*—By constitutional practice which has been perfected in the course of two and a half centuries, the application of the grants of supply of the House of Commons to the services for which they are voted is secured annually by legislation, and is enforced outside Parliament by permanent machinery for administering and accounting for the sums issued to departments in accordance with the parliamentary grants. A brief mention has already been made of this external machinery in the preceding chapter (see pp. 639-44), but it is necessary here to recapitulate the steps in the development of the practice in Parliament itself.

Although some attempts were made by the medieval parliaments to supervise the expenditure of the money they had voted, the practice of appropriation can only be said to have begun in 1668 and did not become regular until after the Revolution. It began as the appropriation of a tax or (later) of a specified sum out of the proceeds of a specially imposed tax. This was effected by a clause in the bill which granted the money or imposed the tax, or, as was usual in the eighteenth century, which both granted the money and imposed a tax to make good the grant. Later, it became usual to introduce a bill at the end of the session which recapitulated and appropriated the several grants made by previous Acts of the same session. It was in this practice that the modern Appropriation Act originated. Payments, especially for new purposes outside the ordinary purposes of government, were sometimes charged on the proceeds of an existing tax; and specified taxes were ear-marked to provide continuing funds for specified services. When the Consolidated Fund was instituted these separate funds were gradually discontinued, and the services previously provided by these funds were appropriated by being charged directly or indirectly upon the Consolidated Fund.

The importance of the principle of appropriation lies in its relation to ordinary expenditure voted upon estimates, which vary from year to year and reflect every change of policy, rather than in relation to expenditure charged upon the Consolidated Fund, which is payable under continuing statutory authority and is relatively constant. Every step in the development of the appropriation of supply has tended to increase the effectiveness and extent of the control of the House of Commons over the administration. Among these steps may be noted the establishment of a distinction of procedure between the voting of expenditure and the voting of taxation, the establishment of the Consolidated Fund, the



transference of the expenses of civil government from the Civil List to the estimates, and the sub-division and classification of the estimates themselves into distinct votes to be separately appropriated. By these means the principle of appropriation has been made more precise and effective, and extended to include the whole range of expenditure of the executive government.

Three important rules of financial practice are implied in the appropriation of expenditure. 1. A sum appropriated to a particular service cannot be spent on another service. 2. The sum appropriated is a maximum sum. 3. It is available only in the current financial year. As a consequence, any sum found to be saved on a vote at the end of a financial year must be surrendered to the Exchequer. See pp. 677, 722, 747, where certain exceptions to Rules 1 and 3 are mentioned.

*The Appropriation of Revenue.*—As has been pointed out above, the practice of appropriation began with the appropriation of taxes, and only gradually attained its present form of the annual appropriation of supply. Revenue is now appropriated not directly, but indirectly through a combination of legal provisions. 1. It is made payable into the Consolidated Fund from which all expenditure is issued. 2. All sums issued out of the Consolidated Fund are appropriated by the Appropriation Act or by specific continuing Acts. 3. At the end of each year any surplus of revenue over expenditure remaining in the Consolidated Fund must be issued by the Treasury under the Sinking Funds Act, 1875, to the National Debt Commissioners for the redemption of debt in the course of the next financial year.

Taxes are payable into the Consolidated Fund by virtue of section 10 of the Exchequer and Audit Departments Act, 1866, which provides that the gross revenues collected by the Revenue Departments shall be paid, after deduction of certain payments such as drawbacks, into the Exchequer Account at the Bank of England. The moneys paid into the Exchequer Account form what is termed the Consolidated Fund. The land revenues of the Crown are payable into the Consolidated Fund by the Commissioners of Crown Lands, as net receipts, under the Crown Lands Act, 1829 (s. 113), and the Civil List Act, 1937, s. 1. Other items of revenue are payable to the Exchequer under specific statutory provision. Receipts realised by departments in the course of their duties are not as a rule paid into the Exchequer, but are directed under the Public Accounts and Charges Act, 1891, s. 2 (2), to be applied in aid of their votes. The sums to be applied as "appropriations in aid" are authorized annually by the Appropriation Act (see p. 710).

Since 1866 there have been a few cases of the diversion of the receipts of specified taxes from the Consolidated Fund and their payment direct into a special fund. An example of such a fund was the Local Taxation Account, which was partly fed by the receipts of taxes which had not passed through the Consolidated Fund. Taxation, so imposed, requires to be specifically appropriated, and is not surrendered under the provisions of the Sinking Funds Act, 1875 (see above). In 1890 the Speaker was asked his opinion on the proposal of the Government to accumulate the proceeds of a tax, so imposed, beyond the financial year, and he expressed his doubt whether such a course was in harmony with constitutional practice (d).

The Speaker has refused to rule out of order a proposal to charge upon

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(d) Parl. Deb. (1890) 345, c. 1799-1805.

the Consolidated Fund a sum representing part of the proceeds of specified duties for purposes to be subsequently determined by Parliament (e). The rule requiring the surrender of surplus revenue would prevent sums for purposes left undetermined at the end of a financial year from escaping parliamentary control without the express sanction of Parliament.

(2) **Legislative authorization and appropriation of expenditure initiated by financial resolutions.**—The requirement of legislative sanction for expenditure for novel purposes initiated by financial resolutions depends as in the case of supply and ways and means upon practice, but admits of no exceptions analogous to those mentioned. Such charges in the former case fall into two classes. Either the charge thus initiated is intended to be payable "out of money to be provided by Parliament," in which case it will be effectively imposed by the voting of an estimate, presented in the same or the succeeding session, and finally authorized and appropriated by an Appropriation Act. Or else the charge is imposed directly "upon the Consolidated Fund," in which case the bill which authorizes the charge is the authority also for the appropriation of the money necessary to make good the charge. A statutory charge initiated by a financial resolution becomes, in fact, either a "Supply service" or a "Consolidated Fund Service" (see p. 641). Every new Consolidated Fund service must be initiated in this way; but not necessarily every Supply service (see p. 672).

#### RULE 2. THE FINANCIAL INITIATIVE OF THE CROWN

The long established and strictly observed rule of procedure, which expresses a principle of the highest constitutional importance, that no public charge can be incurred except on the initiative of the Crown, seems to be differently based in the case of supply and ways and means, on the one hand, and of expenditure initiated by financial resolutions, on the other.

(1) **In respect of Supply and ways and means.**—In spite of the famous "self-denying ordinance" of the House of Commons—the standing order of 1713 (now No. 63) with which it is commonly connected—the rule which withholds from the Commons the initiative in granting supply and ways and means seems to rest upon constitutional practice which had become established long before the passing of that order. This practice, which may be expressed in the rule that a demand from the Crown invariably precedes a grant by the Commons, was the natural result of the constitutional relations between the Crown and Parliament at the time when the practice was established.

Financial practice began to take shape during the long period when the King enjoyed a non-parliamentary revenue which was expected to provide for the ordinary needs of government, and when no legal sanction fettered his discretion in disposing of the supplementary revenue granted by Parliament. During all this period the Commons, as a body traditionally in favour of royal economy, naturally abstained from taking the initiative in offering money to the Crown. The practice of demand preceding grant had accordingly solidified into an invariable rule before Parliament began to take

(e) H. C. Deb. (1909) 11, c. 1094.

steps to appropriate its grants to the purposes for which they were demanded. Hence, in the matter of supply, no standing order of the House of Commons was necessary to maintain the principle of the financial initiative of the Crown. When, with the commencement of parliamentary control over the Exchequer, the granting of supply was differentiated into two functions—the voting of sums of money and the provision of revenue by taxation—it was accepted without question by the House of Commons that the rule applied to both of the now clearly distinguished functions of the Committees of Supply and of Ways and Means, and to any business which ought to originate in either of those committees (*f*).

In these matters the initiative is reserved to the Crown under constitutional practice and its exercise is implied in procedure rather than expressly asserted; but it may be recalled that an announcement that estimates will be presented is contained in the King's speech at the opening of Parliament, that they are presented "by command" of His Majesty, and that the resolutions by which they are voted make them in terms grants to the King. In the case of resolutions imposing taxes submitted to the Committee of Ways and Means, the exercise of the royal initiative, otherwise unexpressed, is taken to be implied in the demand for supply, through the established principle that no more money should be raised by taxation than is necessary to cover the supply already voted by, or at any rate demanded from, the House of Commons (*g*).

**(2) Basis of the initiative in the case of expenditure initiated by financial resolutions.**—While the royal initiative in supply and ways and means rests upon ancient constitutional usage, in respect of novel expenditure it is based on standing orders. The governing standing order is that now numbered 63 (*h*) which reads as follows:

"This House will receive no petition for any sum relating to public service [or proceed upon any motion for a grant or charge upon the public revenue] (*i*) [whether payable out of the consolidated fund or out of money to be provided by parliament] (*j*) unless recommended from the Crown."

The constitutional importance of this standing order has always been recognized, but it is doubtful whether it can be said to have laid down any new constitutional principle. What it did was rather to recognize the principle underlying the long previously established practice whereby the demand of the Crown regularly preceded the grant of supply, and to apply this principle to the action of the House in dealing with proposals for expenditure emanating elsewhere than from the Crown. Such expenditure first presented itself in the form of the disposal of unspent surpluses remaining unappropriated in the Exchequer. The existence of such sums was a new phenomenon at the beginning of the eighteenth century, due primarily to the recent establishment of the practice of appropriation. In the course of the war against France the Commons had taken the step of voting specified sums for the military and naval services instead of the total produce of specified taxes; and when the taxes proved more than sufficient to cover these sums,

(*f*) Owing to the subordination of ways and means to supply the rule was for long less strictly enforced in Committee of Ways and Means (see p. 743).

(*g*) Modern practice has extended the functions of the Committee of Ways and Means (see p. 745).

(*h*) Originally passed as a resolution in 1706 and made a standing order in 1713.

(*i*) This part in brackets was inserted in 1852.

(*j*) This part in brackets was inserted in 1866.

as the officers of the Exchequer were restrained under penalties from issuing the surplus to the Crown, any such surplus remained apparently at the disposal of Parliament. Lacking any executive responsibility, the Commons could find no use of their own for this money except to apply it to the satisfaction of the claims of individuals. Petitions for pecuniary relief multiplied enormously, and the House was driven to the adoption of the standing order, which in its original form, as stated above, applied only to petitions (*k*).

The intention underlying this procedure was in effect that the King's recommendation, signified by a Minister of the Crown, should be a substitute for the Crown's demand for supply. If the King chose to recommend to the Commons a proposal of expenditure not originally made by himself, he could be regarded as adopting it as an addition to his demand for supply. The new form was found convenient and, instead of being reserved for petitions, it was soon extended, without any formal change in the standing order, to motions, and particularly to motions emanating from Ministers and concerned with matters for which the Crown was responsible.

When financial practice had crystallized into the settled forms which are now observed, the notion of *adopting* proposals for expenditure, at first inherent in the royal recommendation, was entirely forgotten. The recommendation came to imply the royal initiative as much as the demand for supply; only it was applied not to purposes which were included in the ordinary annual expenditure voted on estimates, but to purposes in relation to which new powers were sought. At first the requirement of the King's recommendation was confined to proposals which directly and effectively authorized expenditure by ordering payments to be made out of the Consolidated Fund. It was a considerable step when the requirement was extended to proposals which were not in themselves effective, and did no more than direct that payment should be made "out of moneys to be provided by Parliament," i.e. by estimates to be subsequently presented which the House might vote or reject as it pleased. By 1866, when this step was taken, experience had shown that such proposals were not as ineffective as their form suggested, since they often made the presentation of estimates necessary, and thus subjected the initiative of the Crown to dictation by the House (*l*).

In its final form the standing order has had two unexpected consequences : (1) Its phrasing, made more detailed for the purpose of preventing a particular evasion of the spirit of the rule which reserved the initiative to the Crown, has been found capable of an interpretation which opens the door to other forms of evasion (see p. 724). (2) Its provision of a special form of procedure for placing new expenditure on the estimates has helped to define the constitutional practice as to what kinds of new expenditure should and should not be included in the estimates without this preliminary procedure (see p. 712).

### RULE 3. PRELIMINARY CONSIDERATION IN COMMITTEE OF THE WHOLE HOUSE

Like the previously mentioned rule, which reserves the initiative in financial matters to the Crown, the rule requiring the preliminary consideration of such matters in a Committee of the whole House is based upon ancient usage in the case of the Committee of Supply, which deals

(*k*) 3 Hatsell, 241-43; Parl. Deb. (1860) 182, c. 591.

(*l*) Parl. Deb. (1860) 182, c. 591-603.

with ordinary annual expenditure, and in the case of the Committee of Ways and Means, which is principally concerned with the imposition of taxation; but is based upon standing orders in the case of money Committees of the whole House, which deal with particular proposals of expenditure not falling within the scope of the other two committees. The origin and procedure of these committees will be dealt with here; their respective functions as parts of the machinery of the parliamentary control of finance, will be considered in later chapters.

The origin of the somewhat anomalous form of the Committee of the whole House is due to the political conditions existing at the beginning of the seventeenth century. It is usually connected with the suspicion felt by the rank and file of Members for the influence exercised by the Speaker in the House (*m*), and by Privy Councillors in the earlier select committees.

The idea underlying the Committee of the whole House was that of employing the House as a whole for the discharge of duties previously regarded as suitable only for small bodies. In working out this idea the Committee of the whole House was treated as far as possible as if it were a small select committee, especially in the following points:—

(1) The delegation of business of limited scope; (2) informality of procedure; (3) functions connected with preliminary investigation especially of matters of detail.

(1) The notion of a body delegating work to itself in a subordinate capacity might seem at first sight likely to lead to confusion. But it raised no difficulty in practice, because the limitation of the functions of a committee to considering and reporting upon a specific matter referred to it by the House (*n*), and also the fact that the sittings of a committee were not self-determined, but continued from day to day at the pleasure of the House, sufficiently distinguished between a committee and the parent body.

(2) Discussion in a select committee had probably always been conversational in character. Members could speak as often as they liked, no seconder was required to a motion and discussion could take place without the formal proposal of a question from the chair. This informality of procedure was adopted by the Committees of the whole House, but in course of time the procedure of these bodies has grown more like that of the House itself for the reasons stated below (see p. 657).

(3) When the matter referred to a Committee of the whole House was preliminary inquiry into a specified subject, there was a further resemblance to the procedure of a select committee in the fact that counsel could be heard, and evidence taken and discussed, before opinions were formulated into recommendations to be reported to the House. The duty of the committee was often to digest a matter into the "heads of a bill," upon which the House subsequently ordered legislation to be prepared and brought in—a very useful service at a time when the House provided from among its own members the services which are now performed by ministerial departments and professional draughtsmen. This function of preliminary investigation soon became especially connected with financial business.

The other work for which Committees of the whole House were found suitable—inquiry into matters of detail—became connected with a stage in the consideration of bills—their detailed examination and amendment—and

(*m*) C. J. (1547-1628) 371.

(*n*) As late as the eighteenth century resolutions of a Committee of the whole House had to be in the form "That it is the opinion of this committee." The House had previously forbidden committees to presume to take effective decisions in anticipation of their endorsement by the House. Liv. Tract. 37; C. J. (1641) 227, 240

became obligatory in the case of bills of aids and supplies. This function has been considered elsewhere (see p. 569).

With the increase of parliamentary business—and with the increase also in the number of members taking part in debate—the Committee of the whole House gradually lost most of the characteristics of a select committee. In procedure it retained small differences, such as plurality of speeches and non-requirement of a seconder, but in other respects it assimilated its procedure to that of the House. Debate could only take place on a question proposed on a motion for a resolution. The examination of witnesses and hearing of counsel was discontinued. The function of preliminary inquiry became merely an additional stage in the consideration of financial matters—with the advantage of leaving scope for reconsideration, because, in virtue of the subordinate capacity of the Committee of the whole House, its decisions were no more than recommendations which did not bind the House itself.

(1) **Committees of Supply and Ways and Means.**—In the early seventeenth century it became the practice to use Committees of the whole House for the preliminary consideration of demands for supply, and to draft bills granting these supplies on the basis of resolutions reported from these committees (o).

In 1667 this practice was turned into a rule of the House by a resolution which laid down "that if any motion be made in the House for any public aid or charge upon the people, the consideration and debate thereon ought not presently to be entered upon but adjourned to such further day as the House shall think fit to appoint; and then it ought to be referred to the Committee of the whole House and their opinion to be reported thereupon, before any resolution or vote of the House be resolved therein" (p). This resolution, amended so as to bring it into conformity with modern practice, was made a standing order (now No. 68) in 1866.

Before this resolution was adopted the Committee of Supply and the Committee of Ways and Means had become distinguished from other committees of the whole House, and had acquired separate identity and continuity of existence, as bodies to which any proposals dealing with matters within their order of reference were properly referred. With the establishment of the Consolidated Fund and the principle of appropriation, which resulted in dividing the response of the Commons to the royal demand for supply into two functions—the voting of estimates and the granting of taxes—the Committee of Supply was restricted to voting the ordinary expenditure of the year, and the Committee of Ways and Means to providing the revenue to cover that expenditure.

*Dual Function of Committee of Ways and Means.*—Until the practice was instituted of voting specific sums to the Crown on the basis of estimates of expenditure, and of carrying the proceeds of taxation to the Consolidated Fund with a parliamentary check on their issue, the response of the Commons to the royal demand for supply had been the grant of taxes the proceeds of which were at the direct disposal of the Crown. Such taxes had been voted in Committee of Ways and Means, and a trace of this practice persists in the subsidiary function of that Committee—that by which it authorises the issue of lump sums out of the

(o) Scobell 40, 49.

(p) C. J. (1667–87) 52; 3 Hatsell 166.

Consolidated Fund to make good the grants voted in Committee of Supply—its so-called spending function.

(2) **Money Committees of the whole House.**—The employment of money committees of the whole House for initiating financial business which does not fall within the scope of the Committees of Supply and of Ways and Means is based upon standing orders. This procedure was first laid down by the standing order of 1707—now No. 64—which reads:—

“This House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown but in a Committee of the whole House.”

This rule was reinforced in 1866 by S.O. No. 68 which was based upon the resolution of 1667 (cited above) amended so as to include charges upon the public revenues “whether payable out of the consolidated fund or out of money to be provided by Parliament.” By S.O. No. 66, passed in 1821, a “motion for an address to the Crown praying that any money may be issued or that any expense may be incurred” must be moved in Committee of the whole House.

There is no single money Committee of the whole House dealing with specified business of a general financial type, and intended to serve for the duration of a session, like the Committees of Supply and of Ways and Means. Instead, a separate Committee of the whole House is appointed to deal with each particular item of the class of financial business which is initiated by financial resolutions. Each such committee is regarded as coming into existence to consider a referred proposal, and as ceasing to exist when it has reported a resolution.

**Method of appointment of Committees of the whole House.**—From the outset Committees of the whole House have been appointed in two different ways.

A committee on a bill was appointed by a mere reference or committal of the bill itself. A committee on a matter was appointed by a resolution “that this House will (on a specified day) resolve itself into a committee to consider (a specified matter).” A committee of the former type proceeded at once with the consideration of the bill. But in a committee of the latter type, when procedure had developed its modern forms, no business could be done until a motion had been moved, drawn in the form of a resolution of the committee. The latter method allowed a committee greater latitude because, when the order of reference to a committee was wide (as in the case of the Committees of Supply and Ways and Means) a great variety of motions could be moved which fell within the order of reference. Although, committees had long given up to Ministers the right of moving such motions yet an important difference in their powers resulted from the different ways in which they might be appointed.

(1) *The Committees of Supply and Ways and Means.*—These committees are, pursuant to S.O. No. 13, appointed at the beginning of every session as soon as the King’s Speech has been answered by an address (q). As the appointment of these committees is, according to ancient usage, the Commons’ response to the royal demand for supply implied in the speech, the King’s recommendation of the appointment of these

committees has never been considered necessary. The formula used for appointing the Committee of Supply is "that this House will (to-morrow) resolve itself into a committee to consider of the supply to be granted to His Majesty." The formula for the Committee of Ways and Means is "that this House will (to-morrow) resolve itself into a committee to consider of the ways and means for raising the supply to be granted to His Majesty."

(2) *Money Committees of the whole House.*—There are two ways in which such a committee may be appointed. Under S.O. No. 68 the method is similar to that by which the Committees of Supply and of Ways and Means are appointed, namely, a resolution that "this House will (to-morrow) resolve itself into a committee to consider" a matter expressed in general terms. To this "setting up" resolution the King's recommendation is signified. Under this procedure, when the committee is set up, a resolution generally in more detailed terms, or more than one resolution, is moved for the committee to consider and report. S.O. No. 69 offers an alternative method of appointing a committee. This departs entirely from the analogy of Supply and Ways and Means and follows the practice by which a Committee of the whole House on a bill is set up by the committal of the bill. Thus under this procedure a money committee is set up by the committal of a motion which has received the recommendation of the Crown. These motions are generally called financial resolutions as they are drafted in the form of a resolution to be reported to the House, although they are not strictly resolutions until they have been agreed to by the committee. The extent to which under these alternative forms of procedure the power of amendment of the committee is restricted by the rules safeguarding the financial initiative of the Crown is explained on page 733.

#### RULE 4. INTERVALS BETWEEN STAGES OF FINANCIAL BUSINESS

In the case of motions and bills of a financial character the ancient practice of the House prescribed the rule that not more than one stage should be taken on a single day. Under the resolution of 1667 (on which S.O. No. 68 is based) an interval was even required between the proposing of a charge in the House and its preliminary consideration in committee. The effect of the standing orders concerned with this matter has been to reduce the rigidity of the rule by abolishing some of the intervals required by practice.

(1) *Supply and ways and means.*—S.O. No. 70 permits a resolution authorizing the issue of money out of the Consolidated Fund to be considered by the House immediately after it has been reported from committee, and also permits the report and third reading of a Consolidated Fund Bill to be taken in the House immediately after the committee has reported the bill.

(2) *Financial resolutions.*—S.O. No. 69 makes it possible to consider a resolution authorizing expenditure in connection with a bill as soon as the resolution appears on the order paper, without an antecedent order of the House made on a previous day. The effect of S.O. No. 64A is to restrict the operation of the rule of practice which requires the



separate stages of bills, the main object of which is the creation of a charge, to be taken on different days.

#### ENFORCEMENT OF RULES OF FINANCIAL PROCEDURE

The rules of financial procedure, whether based on practice or upon the standing orders, are unquestioningly observed by the House of Commons; and any disregard of them would now only be due to misunderstanding of their applicability in a particular case, or to inadvertence (*r*). Questions of interpretation are decided by the Speaker, or if they arise in committee, by the Chairman. In discharging its duty of disallowing any proceedings which would infringe the rules of financial procedure, the Chair relies in the last resort upon its power to decline to propose the necessary questions. It is principally by the action of the Chair that the financial practice of the House was developed, its principles defined, and any deficiencies in the standing orders (such as those mentioned on p. 661) supplemented.

Examples of intervention by the Chair to secure compliance with these rules will be found in the subsequent financial chapters, but a few typical cases may be mentioned here. Thus it is the duty of the Speaker, acting in this case through the Public Bill Office, to see that the drafts upon the Consolidated Fund authorized by resolutions of the Committee of Ways and Means do not exceed the amount of supply granted since the preceding Consolidated Fund Bill for the service of the year (see p. 707).

Unless the recommendation of the Crown enjoined by S.O.s Nos. 63 and 67 be signified, the Speaker cannot propose the question on a motion which comes within the scope of these standing orders. Accordingly, if any motion or bill or proceeding is offered to be moved, whether in the House or in a committee, which requires but fails to receive the King's recommendation, it is the duty of the Chair to announce that no question can be proposed on the motion or to direct the withdrawal of the bill (*s*). Similarly, after the question has been proposed on an amendment, and it has appeared that the amendment would impose or increase a charge upon the Consolidated Fund (*t*) or upon moneys to be provided by Parliament or upon the revenues of India, the Chair has declined to put the question.

On consideration of a bill reported from a committee the Speaker will disallow any amendment which would have the effect of imposing a charge not authorized by the bill as reported, or of increasing any charge so authorized (*u*). When bills which should have been brought in on resolutions reported from a committee of the whole House have been introduced without such preliminary proceedings, the Speaker has declined to propose the necessary questions and the bills have not been proceeded with (*a*). Similarly, the Speaker has intervened to prevent two stages of a bill introduced on

(*r*) See 3 Hatsell 177 and 167, n.

(*s*) 3 Hatsell 168, n.; C. J. (1799-1800) 396; *ibid.* (1803-04) 335; *ibid.* (1808) 266; Parl. Deb. (1856) 142, c. 1302; *ibid.* (1861) 164, c. 173, 997; *ibid.* (1878) 241, c. 1591; H. C. Deb. (1928-29) 226, c. 216.

(*t*) C. J. (1905) 303; Parl. Deb. (1905) 148, c. 1515; C. J. (1916) 108; H. C. Deb. (1916) 83, c. 362.

(*u*) H. C. Deb. (1939-40) 357, c. 1660-1

(*a*) H. C. Deb. (1912) 35, c. 1495, etc.

resolutions reported from the Committee of Ways and Means being taken on the same day (b).

#### DEFECTIVENESS OF THE FINANCIAL STANDING ORDERS

It will be useful to summarize here the effect of the financial standing orders with a view to showing which of the general rules of financial procedure they prescribe, and to which kinds of financial business they apply these rules. It will be seen not only that they cover a comparatively small portion of the field of financial procedure, but also that they need help from "practice" to cover even that portion effectively.

**Rule 1. Legislative authorization of charges.**—This rule is not prescribed by any standing order.

**Rule 2. The financial initiative of the Crown.**—S.O. No. 63 requires the King's recommendation, as expressing the exercise of the initiative of the Crown, to be signified to "a petition for any sum relating to public service" or "any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament."

S.O. No. 67 requires the King's recommendation for "any petition or motion for a charge upon the revenues of India."

S.O. No. 69 requires the King's recommendation for a "resolution authorizing expenditure in connection with a bill" (c).

In the case of expenditure by estimate (supply) and of taxation (ways and means) the expression of the financial initiative of the Crown is not required under any standing order but (as stated earlier) is dependent on practice based on ancient usage, and is not signified by the standing order formula of "recommendation."

**Rule 3. Preliminary consideration in Committee of the whole House.**—S.O. No. 64 requires preliminary consideration in a Committee of the whole House for "any petition, motion or bill for granting any money or for releasing or compounding any sum of money owing to the Crown."

S.O. No. 66 requires the same for "any motion for an address to the Crown praying that any money may be issued or any expense incurred."

S.O. No. 68 requires the same for "any aid, grant or charge upon the public revenue, whether payable out of the Consolidated Fund or out of money to be provided by Parliament" and "for any charge upon the people."

S.O. No. 69 assumes the need of the same for "a resolution authorizing expenditure in connection with a bill."

As far as supply and ways and means are concerned, the requirement of preliminary consideration in Committee of the whole House is included in the provisions of S.O. No. 68, which in this respect incorporates a resolution of the House of 1667 (see p. 657). No special mention is made by this standing order of the Committees of Supply and of Ways and Means—presumably because they are regarded as varieties of the Committee of the whole House.

(b) H. C. Deb. (1909) 12, c. 136.

(c) This formula is really covered by that contained in S.O. No. 63.

**Comparison of Standing Orders dealing with Rule 2 and Rule 3 respectively.**—If a comparison is made of the kinds of financial business for which, under the standing orders, the King's recommendation is required with those for which preliminary consideration in Committee of the whole House is similarly prescribed, it will be seen that the two lists overlap rather than correspond. This deficiency in the standing orders has been made good by modern practice ; and it may now be stated as a generally observed rule that any kind of financial business which requires to be initiated in Committee of the whole House (other than the Committee of Supply and of Ways and Means) also requires the King's recommendation, and *vice versa*.

The points of correspondence and discrepancy in the two lists are as follows. Petitions for public money, and motions for charges upon the public revenue are included in both lists. Petitions and motions for charges upon the revenues of India, require the King's recommendation under standing order, but it is only under practice that they require preliminary consideration in Committee of the whole House. The releasing or compounding any sum of money owing to the Crown requires preliminary consideration in Committee of the whole House under standing order, and only under practice requires the King's recommendation. "Aids, grants and charges upon the people" are included in S.O. No. 68, but, since they are based on the ancient usage of supply and ways and means, they are demanded and not recommended by the Crown. But when taxation for non-revenue purposes, under a procedure now obsolete, was initiated in Committee of the whole House instead of in Committee of Ways and Means, it was (without standing order authority) held to need the King's recommendation. Addresses praying for public money, though originating in Committee of the whole House do not require the King's recommendation, as, in their case, the initiative lies of intention with the House and not the Crown.

**Rule 4. Intervals between stages.**—Prescribed intervals between the stages of financial business are laid down by ancient practice, and are only modified by the standing orders by way of relaxation in particular cases (see p. 659).

#### APPLICATION TO AMENDMENTS OF RULES REGULATING FINANCIAL PROCEDURE OF COMMONS

The House of Commons has long found it necessary to place restrictions on the moving of amendments in order to keep intact the principle of the financial initiative of the Crown and the rule that expenditure should originate in Committee of the whole House. The rules restricting the power of amendment in deference to the principle of the financial initiative of the Crown developed with very unequal rapidity for the different classes of financial business, and there is a special difficulty in tracing this development owing to the fact that before 1829 committee proceedings were not recorded in the Journals (*d*). It may be found useful however to attempt, however imperfectly, a connected account of the principal features of this development, as an introduction to the collection of

detailed rules and precedents which form the subject of the succeeding financial chapters.

#### DISALLOWANCE OF AMENDMENTS INFRINGING THE FINANCIAL INITIATIVE OF THE CROWN

The financial initiative of the Crown is sometimes referred to in descriptions of procedure as though it were the technical expression of a general rule, uniformly applicable to all classes of financial business, which gives Ministers the right to propose the increase of financial charges and burdens, while withholding such a right from private Members (e). There is no such general rule, and, of course, no such distinction between Ministers and private Members as far as increase by amendment is concerned. Nor are the restrictions, alike on Ministers and on private Members, uniform; they differ according to the machinery through which the financial initiative is exercised.

The financial initiative of the Crown is exercised in different ways in relation to different kinds of business—by the speech at the opening of the session, by the presentation of estimates, by messages under the sign manual, and by statements through a Minister that a particular charge is “recommended.” Such communications defining the scope of financial proposals are made at the outset of proceedings preliminary to legislation, and cannot be enlarged in their course without recommencing such proceedings *de novo*. Ministers are, therefore, in respect of the financial initiative no more privileged than private Members except that, as advisers of the Crown, they are in a position to procure the communications which initiate the proceedings. These communications alone provide the machinery by which the financial initiative of the Crown is preserved from infringement by the House. In consequence of this fact, the power of amendment, in relation to different kinds of financial business, differs in accordance with differences in the communications respectively appropriate to each kind of business. Thus the financial right of the Crown is not uniformly restrictive, but depends upon variations in the machinery employed to enforce it.

#### THE ROYAL DEMAND OR RECOMMENDATION FIXES THE LIMITS OF A CHARGE

The guiding principle in determining the effect of an amendment upon the financial initiative of the Crown is that the communication, to which the royal demand or recommendation is attached, must be treated as laying down *once for all* (unless withdrawn and replaced) not only the amount of a charge, but also its objects, purposes, conditions and qualifications. In relation to the standard thereby fixed, an amendment infringes the financial initiative of the Crown, not only if it increases the amount, but also if it extends the objects and purposes, or relaxes the conditions and qualifications, expressed in the communication by which the Crown has demanded or recommended a charge. And this standard is binding not

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(e) See, e.g. Parl. Deb. (1881) 263, c. 53.

only on private Members but also on Ministers, whose only advantage (as already stated) is that, as advisers of the Crown, they can present new or supplementary estimates or secure the royal recommendation to new or supplementary resolutions. As soon as this was recognized, it was seen to be a matter of great importance whether the form of words to which the royal demand or recommendation was attached was general or detailed; and secondly, as different forms of words might be used at different stages, it became important to determine at which stage the demand or recommendation was effectively made. These matters may be separately considered in relation to (1) Supply; (2) Financial resolutions and their related bills; and (3) Taxation.

(1) **Supply.**—It was not until the King began the practice of presenting estimates for supply that the possibility of infringing the royal initiative by the method of amendment really arose for the House of Commons (*f*). And here the success of the Commons in enforcing appropriation resulted in giving clearer definition to the exercise of the royal initiative, and thus increasing its restrictive effect on amendments. The more detailed the compartments into which the estimates can be divided the more strictly enforceable is the appropriation of expenditure. On the other hand, the more strictly limited also is the power of making adjustments without at the same time increasing or extending particular sums or services specified in the royal demand. The administrative inconvenience of too rigid a scheme of appropriation resulted in the selection of large compartments as the basis of appropriation. Without entering here into the distinction in respect of parliamentary control between the defence services and the civil services (see p. 677) it may be said briefly, that the unit for the purposes of appropriation was fixed as the "vote"—a group of services of considerable size which left reasonable discretion for adjustments within the group to the executive. On the other hand, as the unit for the purposes of the royal initiative, the smallest possible compartment was selected, namely, each of the individual services which are grouped together as items to form a vote.

Amendments were accordingly out of order which, without increasing the total sum demanded by a vote, proposed to set off the increase of a particular item by a corresponding reduction of another item. Similarly, though the sum was not increased, it was out of order to extend any service provided for by a vote to a kindred service. This position seems to have been reached early in the nineteenth century when the Speaker laid it down that "nothing can be brought on in the Committee of Supply of which notice has not been given in detail by the estimates laid before the House" (*g*). Very few attempts are recorded to make even minor increases in the estimates (even to correct alleged errors), or to alter the proposed destination of sums (*h*) (see p. 696). Hence arose the well-known rule of supply that no amendment is in order except a simple reduction of the amount demanded; and the practice became established of moving a "token" reduction of £100 as a "peg" on which to hang an argument for the increase or extension of a service.

The pressing of the principle of the financial initiative of the Crown to a point, where it completely fettered the discretionary power of the House of

(*f*) Previously the demand for supply had usually been expressed in general terms, and the method of raising supply, and often the amount of supply, had been left to the Commons.

(*g*) *Mirror of Parliament* (1828) 1972.

(*h*) *Parl. Deb.* (1843) 71, c. 294-95.

Commons in Committee of Supply, was contingent on a prior decision as to the form of words to which the royal demand was attached and as to the stage at which this demand was effectively made. The choice lay between three stages, each with its appropriate form of demand. The effective stage might have been held to be (1) the intimation in the King's speech that "estimates for the public services will be laid," or (2) the presentation of the estimates "by command" of the King, or (3) the moving by a Minister of the individual votes in Committee of Supply. Excluding the first-mentioned form of procedure as practically abandoning the financial initiative to the Commons, the choice lay between the latter two. A decision that the effective demand of the Crown was made in the moving by a Minister of a vote in supply would have been in keeping with the decision actually made in the parallel cases of financial resolutions and taxing resolutions (see below). Such a decision would have left with the Commons, in considering the estimates, a discretion analogous to that which is actually exercised by the executive in accounting for the votes. That is to say, it would have been possible by amendment to have made adjustments within a vote by increasing certain items at the expense of others, so long as the total amount of the vote was not exceeded. The fact that the alternative, and far more particularized, form of demand—that constituted by the estimates themselves—was accepted by the House of Commons as the effective demand of the Crown had—eventually—a powerful effect in persuading the House to accept similar restrictions in the other kinds of financial business, which must now be mentioned.

(2) **Bills and financial resolutions.**—In the eighteenth and the first half of the nineteenth century, the King's recommendation under S.O. No. 63 (which takes the place of the demand for supply) was given to petitions, clauses of bills, instructions and motions moved in the House itself. Now it is only given to motions which are about to be moved in committee of the whole House under S.O. No. 69, or to motions under S.O. No. 68 referring a particular matter to the consideration of a Committee of the whole House. The differences between these alternative modern forms of procedure are explained in detail in Chapter XXVI (pp. 733-4). Here all that need be said is that the latter, which is the earlier form, is adapted to a generalized statement of the purposes of expenditure initiated by the Crown, and leaves a measure of discretion to the Commons; while procedure under S.O. No. 69 can be used to draft a motion, sanctioning expenditure recommended by the Crown, in almost as complete detail as the provisions of the bill which lay down the conditions under which this expenditure is to be administered. By this method the principle of the financial initiative of the Crown can be turned into a means of restricting the power of the Commons to amend financial legislation almost as completely as the form of the estimates restricts their power to adjust administrative expenditure.

This modern development throws so much light upon the attitude of the Government and of the House of Commons itself to financial procedure that a brief account is necessary of certain of its aspects. The problem has arisen through a change in the attitude of the House of Commons to expenditure. From regarding itself as primarily a check upon executive extravagance, it has turned more and more during the last fifty years to pressing expenditure upon the Government. But during its period of retrenchment it had allowed the restrictions upon its powers of amendment in supply to be firmly established. The machinery by which this was enforced had been lost sight of, and it was generally held that it was the rôle of the Government, not only to propose new expenditure, but also to increase expenditure after

it had been proposed, and the rôle of the Commons to accept or reduce the Government's proposals. Thus, when in 1881, and again in 1891, advantage was taken of a widely drawn financial resolution to propose amendments which enlarged the related provisions of a bill (without, however, exceeding the terms of the financial resolution), surprise was expressed even by the Chair that the procedure of the House permitted an apparent infringement of the financial initiative of the Crown which would have been impossible in Committee of Supply (*i*).

When the increasing frequency of such amendments had familiarized the House with the nature of the machinery for expressing the financial initiative of the Crown, and it was appreciated that the terms of the financial resolution recommended by the Crown decided once for all the limits of amendment to the bill itself, the analogy of the estimates suggested to the advisers of the Crown that the financial resolution should as far as possible particularize the details of the expenditure which it authorized. As a motion embodying a financial resolution was more adapted to this purpose than the terms of reference employed in setting up a financial committee, exclusive use came to be made of the procedure under S.O. No. 69, which had been intended for emergency use only, and the older procedure under S.O. No. 68 fell into discontinuance. This change in procedure has not been accepted without protest by the House (*k*); and it is obvious that the principle which reserves the financial initiative to the Crown cannot be applied to legislative procedure with the same degree of restrictiveness as it is applied to the procedure of supply without equally depriving the House of Commons of all power of constructive amendment, even of the details, of financial provisions (*l*).

A select committee was appointed on 26 April 1937, "to consider the working of the standing orders relating to public money and, subject to the unimpaired maintenance of the principles embodied in S.O.s No. 63 to 66 (both inclusive) to report as to whether any or what changes are desirable in S.O.s Nos. 68 and 69 or in the procedure relating to money resolutions" (*m*). The principal recommendation of the committee, which reported on 13 July 1937, was that the terms of a financial resolution should be drafted more widely than the terms of the related provisions of a bill, and it proposed that a declaratory resolution should be passed by the House indicating (in terms suggested by the committee) how much wider they should be drawn (*n*). In a statement in the House on 9 November 1937 the Prime Minister announced that, while the Government was unable to support the proposed declaratory resolution, instructions were to be given to the departments and the Parliamentary Counsel's Office that financial resolutions in respect of bills should be "so framed as not to restrict the scope within which the committee on the bills may consider amendments further than is necessary to enable the Government to discharge their responsibilities in regard to public expenditure, and to leave to the committee the utmost freedom for discussion and amendment of details which is compatible with the discharge of those responsibilities" (*o*).

In response to an appeal by the Leader of the Opposition for an expression of his opinion the Speaker made a statement concluding with a recognition

(*i*) Parl. Deb. (1881) 263, c. 53; *ibid.* (1891) 354, c. 1898.

(*k*) H. C. Deb. (1936-37) 321, c. 815-930.

(*l*) See report of Select Committee on Procedure relating to Money Resolutions, H. C. 149, p. viii, etc. (1937).

(*m*) C. J. (1936-37) 229.

(*n*) H. C. 149, p. xiv (1937).

(*o*) H. C. Deb. (1937-38) 328, c. 1595.

of the advance made by the Government in their desire to meet the wishes of Members (p).

(3) **Taxation.**—The relation between the financial initiative of the Crown and taxation has in modern procedure become indirect. In earlier procedure the voting of taxes was the regular response of the Commons to the royal demand for supply. But when this simple form of procedure divided into the separate functions of voting expenditure in Committee of Supply and imposing taxation in Committee of Ways and Means, the demand for supply continued to be regarded as the effective expression of the royal initiative which started the process of voting taxes. This view subordinated ways and means to supply, and found expression in the maxim that "the money proposed to be raised by taxes should not exceed the sum already granted in the Committee of Supply" (q)—or (in its modern form) "should not be more than sufficient to provide for the expenditure of the year." Hence the rule (referred to on p. 750) that taxes not primarily required to provide revenue ought to be recommended by the Crown, since they were not covered by the royal demand for supply. In recent years taxation of a protective rather than revenue character has, however, been initiated in the Committee of Ways and Means.

The view which made the proposal of taxes dependent upon the demand for supply prevailed at the time when it became necessary to find a procedure which would protect the financial initiative of the Crown from being infringed by amendments. It tended to connect the royal initiative exclusively with the *amount* of revenue which it was the object of a tax to raise. Hence, in early editions of this book it was stated that "the Crown has no concern in the nature or distribution of taxes" (r). Hence, also, amendments were at first permitted which proposed the substitution of a different tax for a tax proposed by the Government (provided that both were estimated to yield an equivalent amount) on the ground that the necessity of new taxation to that extent had already been declared on behalf of the Crown (see p. 753). In modern practice this view is regarded as incomplete, and as requiring to be supplemented by the view that the royal initiative in taxation implies the exclusive right to define the *incidence* as well as the *amount* of burdens to be placed upon the people, and that an amendment which transfers a burden to taxpayers not previously liable is an infringement of this initiative (see p. 753).

This alteration of practice was not deliberately adopted by the House, but seems to have imposed itself on the Chair through an instinctive appreciation of the fact that it was implied in the principle of the financial initiative of the Crown. In 1862 an amendment was ruled out of order because it proposed to extend the incidence of licence duties on brewers to other manufacturers previously exempt. But the statement that "the Crown has no concern in the nature or distribution of taxes" remained till the ninth edition of this work, published in 1883. In the tenth edition, published in 1893, these words were omitted without comment (s).

This change of view as to what the financial initiative in taxation implied

(p) H. C. Deb. (1937-38) 328, c. 1599. For a detailed account of this controversy, see Jennings "Parliament," pp. 255-364.

(q) 3 Hatsell 196. Until 1874, when S.O. No. 13, passed on the 28 July 1870 (C. J. (1870) 375), was put into effect, the Committee of Ways and Means was not set up until a resolution reported from the Committee of Supply had been agreed to by the House (see, e.g. C. J. (1873) 56). Up to this year, also, it had been usual to preface taxing resolutions, proposed in Committee of Ways and Means, with the words "towards raising the supply granted to His (Her) Majesty" (see, e.g. C. J. (1873) 162).

(r) First edition, p. 324; Ninth edition, p. 651.

(s) Tenth edition, p. 515.



was accompanied by a change in formal procedure with respect to the action on the part of the Crown by which the initiative was taken to be effectively expressed. In place of the demand for supply, the moving of taxing resolutions on behalf of the Crown came to be regarded as the effective initiation of charges upon the people. When this view was firmly established, the former distinction between taxes for revenue and taxes not primarily for revenue was lost sight of, since the moving of a tax on behalf of the Crown was a method of exercising the initiative which was equally applicable to either case. Hence, on the analogy of a financial resolution, but without the royal recommendation, the motion by which a tax is proposed in Committee of Ways and Means is now treated as the effective expression of the financial initiative of the Crown, and therefore as the standard in relation to which the admissibility of amendments is determined. Accordingly an amendment is debarred, not only from increasing the rate of a tax, but also from extending its incidence to new classes, even while proposing to relieve other classes of payers. Examples of proposed amendments of this type will be found in Chapter XXVII. On the analogy also of financial resolutions these matters tend to be expressed with increasing detail in taxing resolutions.

There is a certain difficulty, peculiar to ways and means resolutions, in deciding precisely the stage at which the royal initiative in proposing a tax is signified in the House. Ways and means resolutions do not require notice and are usually moved without it. As a consequence, if notice is given, there is nothing to prevent such a resolution being moved in a form which differs from the notice (see p. 751). If this happens, it is the motion in the form in which it is proposed from the Chair, and not in the form in which it has been notified, which is taken as expressing the royal initiative and hence as restricting the power of amendment. This ambiguity is peculiar to ways and means. In the case of supply and also of financial resolutions the matter effectively initiated by the Crown is expressed in writing and cannot be varied orally.

#### STAGE OF FINANCIAL RESOLUTION WHICH GOVERNS BILL

The financial initiative of the Crown restricts proceedings on a bill, not directly, but through a financial resolution in the form in which it is agreed to by the House. The resolution by which the financial initiative of the Crown is exercised—whether it be a vote submitted to the Committee of Supply or a taxing resolution proposed in Committee of Ways and Means, or a resolution to which the King's recommendation has been signified, whether under S.O. No. 68 or S.O. No. 69—may, of course, be amended in committee, or in the House on the report of the committee, either by a reduction of the amount or incidence of a charge, or by an increase in the stringency of the conditions or qualifications to which it is subjected. In such a case—which for various reasons is very rare—it is the resolution in its final form, as agreed to by the House on report, which is held to provide the necessary authorization both for the financial provisions of the related bill, as introduced, and also for any amendments which may be offered to it at a later stage (see p. 740). Thus a charge which has been reduced at any stage of a resolution cannot be restored to the original amount at any stage of a bill. For the financial provisions in a bill are governed by the finally agreed form of the resolution in which

the financial initiative of the Crown is exercised ; and this may be effectively restricted, though it cannot be enlarged, in the House itself.

#### DISALLOWANCE OF CHARGING AMENDMENTS MOVED IN THE HOUSE

An amendment proposed may, without infringing the financial initiative of the Crown, fail to conform with the rule which requires the initiation of charges in a committee of the whole House. In its modern form the rule may be stated as follows. No amendment offered to a bill or to a resolution reported from committee is in order, if it either imposes a charge not contained in the bill or resolution reported from committee, or increases a charge above that contained in the bill or resolution so reported. Thus, in order to determine whether a charge is imposed or increased by an amendment moved in the House, the standard of comparison is the bill or the resolution in the form in which it left the committee ; and there is no need to refer back to the terms of the related vote or resolution (if any) which embodied the demand or recommendation of the Crown. However completely, for instance, a charge proposed by an amendment to a bill on report may be covered by a financial resolution, it is out of order if it increases the charge authorized by the bill as reported from committee. Similarly, if a charge is reduced or eliminated by an amendment in committee, it cannot be restored in whole or in part by an amendment on report. The proper course in such cases is to recommit the bill or resolution.

## CHAPTER XXV

### EXPENDITURE : SUPPLY

This chapter (which is the first of four describing in detail the financial procedure of Parliament) is concerned solely with the procedure under which the ordinary expenditure of the year is presented, voted, and sanctioned by legislation. It deals with the main varieties of Estimates and the form in which they are presented ; with the procedure in Committee of Supply and the consequential proceedings in Committee of Ways and Means ; and with the Consolidated Fund Bills and Appropriation Bills which respectively authorize the issue of sums out of the Consolidated Fund and restrict their application both in scope and amount to the services for which supply has been voted. Of the other kinds of expenditure, that on "Consolidated Fund Services" is mentioned on p. 641, while the authorization of expenditure on new purposes by special bills forms the subject of the next chapter.

#### APPLICATION TO ORDINARY ANNUAL EXPENDITURE OF THE GENERAL RULES OF FINANCIAL PROCEDURE

The general rules of financial procedure set out on p. 649, may in their application to ordinary annual expenditure be stated as follows :—

(1) The legislative authority required by Rule 1 is given to ordinary annual expenditure by annual bills called Consolidated Fund Bills and Appropriation Bills, which must originate in the House of Commons.

(2) Such expenditure is embodied in estimates presented by command of His Majesty, and the exercise of the Crown's initiative required by Rule 2 is expressed by this fact and by the reference to these estimates regularly contained in the King's Speech at the opening of the session.

(3) The Committees of the whole House, required by Rule 3 to consider such expenditure, are the Committees of Supply and of Ways and Means (the former of which grants to the Crown the sums separately demanded for the several services, while the latter votes the issue out of the Consolidated Fund of a lump sum to cover the total of these grants), and the resolutions of these committees, when agreed to by the House, are a necessary preliminary to the authorizing bills referred to above.

(4) Rule 4, which prescribes intervals between stages, applies, subject to a certain relaxation explained on p. 659.

#### A. THE ESTIMATES

##### DIFFERENT KINDS OF ESTIMATES

Estimates are divided into :—

1. Ordinary Annual Estimates (Main Estimates).
2. Votes on Account.

3. Supplementary Estimates.
4. Estimates for Excess Grants.
5. Votes of Credit.
6. Exceptional Grants.

### 1. ORDINARY ANNUAL ESTIMATES (MAIN ESTIMATES)

In accordance with the royal direction, estimates are annually laid before the House of Commons, stating the specific grants of money which will, during the current year, be required for the navy, the army, the air force, and the civil and revenue departments. The estimates are on presentation referred to the Committee of Supply (if it has been appointed) and ordered to be printed. It should be noted that, although presented "by Command", the Estimates are, unlike other command papers, presented not to both Houses of Parliament but to the House of Commons only, and printed not at the instance of a department but by order of the House; they are numbered as House of Commons papers and not in the series of command papers.

#### DATE OF PRESENTATION OF ESTIMATES

The date of presentation of the estimates falls about the end of February and is determined by the requirement that copies shall have been in the hands of Members for a reasonable period before the motions for moving the Speaker out of the chair on the various branches of the estimates (see p. 689) are taken. In respect of the defence services these motions are taken *before*, in respect of the civil and revenue departments, soon *after*, the beginning of the financial year to which they relate. The estimates for the defence services are accordingly published shortly after presentation, as is also the vote on account for civil services (which has to be taken before the end of the financial year). But the civil estimates are published at intervals class by class, though they must all have been published before the Speaker is moved out of the chair on civil estimates.

By resolution, 19 February, 1821, the House directed that whenever Parliament assembled before Christmas, the estimates for the naval and military services should be presented before the 15th day of January then next following, if Parliament were then sitting; and that such estimates should be presented within ten days after the opening of the Committee of Supply, when Parliament did not assemble till after Christmas (*a*). These directions are no longer observed, and there are no similar directions for the civil estimates.

#### FOUR BRANCHES OF MAIN ESTIMATES

The estimates are grouped into four main branches which are printed as separate volumes under the titles Navy Estimates, Army Estimates, Air Estimates, Civil and Revenue Departments Estimates. The last-mentioned branch of estimates is printed and issued in two separate volumes, but constitutes a single branch for the purpose of moving the Speaker out of the Chair (see p. 689).

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(a) C. J. (1821) 87.

Until 1854, estimates were not presented in respect of the revenue departments. Prior to that year, the charges of collecting the revenue were deducted by each department from the gross sums collected. This practice, which withdrew the full produce of the taxes, and the cost of collection, from the immediate control of Parliament, was condemned by a resolution of the House, 30 May 1848 (*b*). The whole of the revenue derived from taxation, after the deduction of payments for drawbacks, bounties of that nature, repayments and discounts, is now paid into the Exchequer, and the cost of the revenue departments is included among the annual estimates (*c*).

#### FORM OF THE ESTIMATES

As the Sovereign is responsible for the presentation of the estimates of the public expenditure, the Crown, acting through its Ministers, controls, subject to the requirements of the Exchequer and Audit Departments Act, 1866, the form in which the estimates are presented. This control has devolved on the Treasury as the chief financial department, and as responsible under section 23 of that Act for the form of the accounts of each spending department—the form of an account being necessarily determined by that of the estimate, which is its “precursor and foundation” (*d*). Under established usage, however, important changes in the customary form of the estimates should not be made without the previous approval of the Public Accounts Committee (see p. 644), and since 1921 of the Estimates Committee (*e*), acting on behalf of the House of Commons; and, in deference to this principle, official alterations in the estimates are restricted to such rearrangements as involve no question of principle (*f*).

#### THE CONTENTS OF THE ESTIMATES

The Estimates are limited to setting out only the sums which it is calculated will be paid in the current year, and do not show the value of assets held or the liabilities outstanding from the previous financial year or to be spread over future years. They are drawn up on the basis of departments, but all the services administered by a single department are not necessarily included in the same vote.

Each vote is sub-divided into sub-heads (see below) (*g*), according to the subject of the expenditure or, in other words, the description of the service rendered. Greater definiteness is obtained by refraining from abstract classifications by objects or purposes. But, on the other hand, the net cost only of administering a service is demanded; and, to arrive at its total cost, it is necessary to add the value of services rendered by other departments,

(*b*) C. J. (1847-48) 87.

(*c*) Exchequer and Audit Departments Act, 1866, s. 10, which repealed a similar provision in the Public Revenue and Consolidated Fund Charges Act, 1854. See also C. J. (1854) 467; Todd, ii. 201; Ept. H. C. 154, p. 175-6 (1937-38).

(*d*) Ept. H. C. 154, p. 212 (1937-38).

(*e*) H. C. Deb. (1921) 143, c. 1506-7, 2079-82.

(*f*) Parl. Deb. (1890) 341, c. 1517; see also Public Accounts Committee's Reports H. C. 333, p. iii. (1867); *ibid.* 350, p. iii (1881); *ibid.* 405, p. iv. (1888); *ibid.* 71, p. iv (1890); *ibid.* 361, p. ix (1890-91); *ibid.* 288, p. x (1904); *ibid.* 179, p. iii (1913); *ibid.* 115, p. xxiii (1916); *ibid.* 125, p. 31 (1923). The form of the estimate cannot be discussed on the vote in Committee of Supply, Parl. Deb. (1906) 156, c. 122.

(*g*) Machinery of Government Report, 1918, pp. 7-10 and 14-16, and Committee of National Expenditure, 1918, 7th Report, H. C. 98 (1918).

for instance, those for heating, lighting, accommodation, stationery, etc. These inter-departmental services are borne on the estimates of the Office of Works, Stationery Office, etc., but a note showing the cost of services received from other departments is printed in each estimate.

The Navy Estimates at present consist of 16 votes, the Army Estimates also of 16 votes, and the Air Estimates of 12 votes.

The Civil Estimates, consisting of about 140 votes, are now (following a recommendation of the Estimates Committee in 1926 (*h*), put into effect in the Estimates of 1927), sub-divided into the following nine classes :—

- Class I. Central Government and Finance.
- Class II. Foreign and Imperial.
- Class III. Home Department, Law and Justice.
- Class IV. Education and Broadcasting.
- Class V. Health, Labour and Insurance.
- Class VI. Trade, Industry and Transport.
- Class VII. Common Services (Works, Stationery, etc.).
- Class VIII. Non-effective Charges (Pensions).
- Class IX. Exchequer Contributions to Local Revenues.

The principles underlying the classification of estimates are that closely connected services should appear together in their appropriate class and that all estimates representing activities controlled by or limited to a particular department should be grouped in the same class.

Each class is divided into a number of "votes," which are votable separately by the Committee of Supply. Votes are the units of appropriation (see p. 664).

**Sub-division of Votes.**—Each vote is divided into three parts :—

Part I specifies the services for which the estimate is presented and the net amount of the grant demanded from Parliament.

Part II summarises under sub-heads the expenditure and receipts (if any) which make up the total amount specified in Part I, names the department which will account for expenditure of the grant under those sub-heads, and states the gross expenditure in connexion with the service for which the grant is made. In a footnote is stated the expenditure borne by other departments.

Part III explains in such detail as is considered necessary the nature of the expenditure and receipts provided under each of the sub-heads in Part II with comparable figures for the previous year.

Part I is the operative part of an estimate. It shows the sum which is voted separately by the House and afterwards appropriated by the Appropriation Act (see p. 710), and states the services for which such sum is granted in general terms which define the "ambit" within which the details set out in the sub-heads and items of Parts II and III must fall. From the point of view of parliamentary control the purpose of the other two parts is explanatory and has no statutory significance (except that the receipts, if any, set out in Part II are afterwards appropriated in aid of

(*h*) Estimates Committee First Report, 1926, H. C. 59 (1926).

the vote by the Appropriation Act), though the sub-heads in Part II indicate a further measure of Treasury control over the departments (see p. 640) which cannot independently vary the allocation of the sums between different sub-heads (see p. 677).

**Appropriations in Aid.**—As previously stated, the sum to be voted shown in Part I of an estimate is a net sum, being the difference between the total expenditure shown under the expenditure sub-heads in Part II and the receipts (if any) shown under the final sub-head. These receipts, which arise in the course of business of a department (through fees or sales, etc.), are, instead of being paid into the Exchequer, directed by Treasury Minute under the Public Accounts and Charges Act, 1891, to be appropriated in aid of the department's estimate as if they were money provided by Parliament for that purpose. The amount of its receipts which a department may use is limited and subject to parliamentary control, as any surplus actually received above the amount estimated to be received by a department is not applied as an appropriation in aid but is paid into the Exchequer. On the other hand the Committee of Supply cannot discuss the application, or reduce the amount, of appropriations in aid (see p. 652).

#### TOKEN VOTES AND SUB-HEADS

Estimated receipts in the case of certain services, such as those of the Public Trustee or the State Management Districts, may be equal to or greater than the gross expenditure. In such a case, in order to maintain parliamentary control over the gross expenditure, a "token" estimate for a conventional sum—£100 (i)—is presented, receipts being appropriated in aid to an amount less by £100 than the gross expenditure on the service and the balance of receipts being paid as "extra" receipts into the Exchequer.

A token sub-head is inserted in a main estimate when it is anticipated that a grant of money will be required for a service involving an extension of the ambit of Part I as previously defined, or when the amount of the grant cannot be precisely estimated, either because of its contingent nature or because, being a new service, insufficient detail is available. In such a case a "token" sum is inserted under the appropriate sub-head, together with the information so far available, and the expenditure actually incurred is financed either out of savings on the vote generally or by the subsequent presentation of a supplementary estimate. (See also pp. 681-2).

#### REVISED ESTIMATES

If it proves to be necessary to vary the terms of a vote (so as to alter the ambit of the vote, or even to alter materially the description of a sub-head) or to reduce the amount demanded, the original estimate is withdrawn and a revised estimate presented. This can, of course, only be done before the original estimate has been *voted*, though it may be done after the Committee of Supply has reported progress on it. According

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(i) In accordance with a recommendation of the Public Accounts Committee, Epit. H. C. 154, p. 714 (1937-38).

to modern practice too it is not customary to present a revised estimate for an increased amount (*j*). If an increased amount is required, the original estimate is proceeded with and a supplementary estimate is presented.

## 2. VOTES ON ACCOUNT

Since the sums granted by Parliament to cover the estimated expenditure of a particular year are appropriated by statute to the service of that year only, it follows that any unexpended sums in the hands of the departments at the end of one financial year cannot be retained for use in the next, but must be surrendered to the Exchequer. It is, accordingly, necessary to make provision in advance for the public service during the coming financial year. Various considerations—such as the undesirability of framing estimates too long in advance of the year to which they relate, and the fact that the House of Commons has come to use the discussion of estimates primarily as an opportunity for the criticism of administration, and wishes therefore to keep them “open” till near the end of the session—combine to make it impossible to dispose of the estimates before the beginning of the financial year. Some provision of grants before the beginning of the year and in advance of complete parliamentary sanction is therefore necessary. The method of providing these grants in advance differs in the case of the civil and revenue departments services on the one hand and the defence services on the other, because the latter have (as is explained on p. 677), while the former have not, the advantage of temporarily being allowed to apply grants for any one vote to the service of any other vote, provided the total sum voted for any defence service is not exceeded. In the case of the defence services money is obtained to cover their general expenditure during four or five months of the coming financial year by granting some half dozen of their major votes before the close of the current financial year. On the other hand in the case of the civil and revenue departments services a special estimate is presented called a “vote on account” which provides a total amount estimated to cover the needs of those services for the requisite period of four or five months before complete provision will have been made.

### THE CIVIL VOTE ON ACCOUNT

The operative part of the civil vote on account is a demand for an aggregate sum representing a proportion (see below) of the total estimated expenditure of the civil and revenue departments for the coming year. In a schedule are given figures showing for each vote that will be included later in the ordinary estimates (1) the net estimated expenditure for the coming year; (2) the net expenditure provided for in the estimates (including supplementary estimates) of the closing year, and (3) the amount required to be voted on account for the period to be covered. This period is now regularly the period from the beginning of the financial year to the middle of August, by the end of which period, through the

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(*j*) This has been done in the past—Grants in Aid of Colonies, 1880–81; Privy Seal Office, 1881–82; Ordnance Factories, 1900–1.



provisions of S.O. No. 14, it is confidently anticipated that final parliamentary sanction will have been given to all the estimates by the passage into law of the Appropriation Act. Before the passing of that standing order a vote on account was, owing to the justified suspicion of the Commons that the Government would take advantage of their provision to put off supply to the last days of the session, rarely allowed to provide for more than two months' expenditure, and a second vote on account was usually, and a third occasionally, necessary.

According to established usage, demands for grants on account are restricted to such services as have received the sanction of Parliament (*k*), though an exception is occasionally made to this rule in favour of trifling and non-contentious new services.

The civil vote on account is taken some time before the Speaker is moved out of the chair on the civil estimates (see p. 689) and the days on which the separate stages in committee and on report of this vote are taken are counted as "allotted" days (S.O. No. 14 (5)).

#### VOTES ON ACCOUNT BEFORE A DISSOLUTION

Grants on account may also be rendered necessary by a dissolution of Parliament. If the dissolution occurs in the early portion of a session, before supply is completed, it may be necessary to take votes on account sufficient to carry on all the services, navy, army, and air, as well as civil, until the new Parliament is able to consider the grant of supply (*l*).

The amounts demanded for grants on account caused by a dissolution were, to take the case of 1841 (*m*), a supply consisting of one-half of the civil and miscellaneous expenditure. In 1857 (*n*) and 1886 (*o*), supply was taken for four, and five months. In 1880, supply was taken for three months, in behalf of the bulk of the navy and the civil services, and a four months' grant for education, and for those other special services, that used to be seldom voted in full until late in the session (*p*). When Parliament was dissolved in 1886, as the navy department was possessed of a sufficiency of supply, by the exercise of the power of making a temporary application of the grants they had received towards the service in general, nominal sums only were taken on account for the navy services (*q*). In 1895 votes on account representing four months' expenditure having been already taken for the civil services, the third vote on account, taken immediately before the dissolution, represented one month's expenditure, while votes on account were taken for the navy and army services of £1,000,000 and £4,000,000 respectively (*r*). The facility thus given for carrying on the executive government without

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(*k*) Report of Select Committee on Public Moneys, H. C. 279, p. 7 (1857, sess. II); Parl. Deb. (1865) 178, c. 740; *ibid.* (1866) 181, c. 1780, *ibid.* (1868-69) 197, c. 1440; *ibid.* (1863) 341, c. 1518. In deference to this usage, in session 1895 a sum for the British East Africa Company, proposed to be included in the second vote on account, was withdrawn therefrom and included in a revised additional estimate, Parl. Deb. (1895), 34, c. 656.

(*l*) C. J. (1859) 158. Before the dissolution in May, 1929, the whole of supply was voted, C. J. (1928-29) 254.

(*m*) C. J. (1841) 383.

(*n*) C. J. (1857) 93, 98.

(*o*) C. J. (1886) 220, 275.

(*p*) C. J. (1880) 92, 93.

(*q*) C. J. (1886) 275.

(*r*) C. J. (1895) 317, 318, 319; Parl. Deb. (1895) 35, c. 96.

reference to Parliament, has not been unnoticed. In 1841, Lord John Russell, on 7 June, proposed to take Supply up to 1 October. Sir Robert Peel objected, that this would enable the Government to defer the meeting of Parliament until October; and this objection was met by an assurance that the new Parliament should be summoned as soon as possible (s); and, under similar circumstances, when, in 1886, supply was asked for a period extending from June to 31 October, Mr. Gladstone stated that he thought it quite certain that Parliament ought to meet at an early date (t).

The grants on account made necessary by a dissolution should be sanctioned by an Appropriation Act, passed before Parliament is dissolved, applying in detail all the supply voted in the expiring session in the same manner as at the close of an ordinary session; and the amount of supply left unvoted is dealt with by the succeeding Parliament (u).

The prorogation or dissolution of Parliament without an Appropriation Act is a constitutional irregularity, as thereby all the grants of the Commons are nullified, and the sums must be voted again in the next session, before a legal appropriation can be effected (a).

#### VOTES IN ADVANCE FOR DEFENCE SERVICES

The requirements for the defence departments for the coming financial year are, as stated above, provided for in a different manner. This difference is due to the fact that, while money appropriated to a particular vote for a civil or revenue department is in no circumstances applicable to another such vote, money appropriated to any one navy, army, or air vote is held to be applicable *ad interim* to any other vote of the same service. There is no definite statutory authority for this long standing facility, but it is implied by the still larger power of *virement* (p. 644) which the Appropriation Act gives to the Treasury of sanctioning temporarily the application of savings on one navy, army, or air force vote to meet excesses on other votes of the same service. In virtue of this facility it is the practice before the commencement of each financial year to obtain several major votes for each defence department (in addition to the vote for numbers) so that it may use the funds so provided to meet expenditure during the first four or five months of the year on all its votes. In recent years the votes so taken, apart from Vote "A" (for numbers) have been:

*Navy*: 1 (Pay), 10 (Works), and 2 (Victualling and Clothing), and sometimes 13, 14, and 15 (all for Non-Effective Services).

*Army*: 1 (Pay), 10 (Works), 11 (Miscellaneous Effective Services), and 13, 14, and 15 (all for Non-Effective Services).

*Air*: 1 (Pay), 4 (Works), 3 (Technical and Warlike Stores) and 8 (Civil Aviation).

The respective works votes are taken at this stage, so as to ensure that as far as possible, new works, however urgent, may not be commenced

(s) Parl. Deb. (1841) 58, c. 1274.

(t) Parl. Deb. (1886) 306, c. 1317; see also *ibid.* (1892) 3, c. 507.

(u) See Appropriation Acts, 1886 (sess. I and II).

(a) On the advice of Mr. Pitt in 1784, and of Lord Grey in 1831. The Commons, in 1784, resolved that the persons who acted on supply grants unsanctioned by an Appropriation Act, would be guilty of a high crime and misdemeanour, C. J. (1782-84) 858.

without the prior sanction of Parliament, and that such sanction shall not be delayed beyond the opening of the financial year.

Unlike the civil vote on account, the defence votes are normally taken in committee on separate days immediately after the Speaker has been moved out of the chair on the respective services, and these days are not counted as "allotted" days; though the day on which the reports of such estimates are considered is an "allotted" day.

### 3. SUPPLEMENTARY ESTIMATES

Supplementary estimates are presented in a somewhat different form for the defence services and for the civil services respectively. A navy supplementary estimate, for instance, though possibly covering all the votes comprised in the original navy estimates, is presented and moved as a single vote with a schedule showing the original votes together with the increase or reduction (if any) proposed to each vote. Whereas a civil supplementary estimate consists of a number of votes, each supplementary to an original vote, and each having to be voted separately (*b*).

A supplementary estimate may be presented either (1) for a further grant to an existing service, in addition to the sum already demanded for the current financial year, or (2) for a grant caused by a fresh occasion for expenditure that has arisen since the presentation of the sessional estimates, such as expenditure on behalf of a service newly imposed upon the executive government by statute, or to meet the cost created by an unexpected emergency.

#### (1) SUPPLEMENTARY ESTIMATES DUE TO REVEALED INSUFFICIENCIES

The need for a supplementary grant to an existing service generally results from the system in force to ensure the control of Parliament over public expenditure, which necessitates the drawing up by the departments of their estimates for a year beginning on 1 April in time for their submission to the Treasury in the preceding month of November.

Supplementary estimates due to the insufficiency of the original estimates are usually presented in February or March, are voted in Committee of Supply with debate unrestricted by any form of guillotine, such as that which operates upon the main estimates; and ways and means to cover them are provided by the Consolidated Fund Bill which receives the royal assent shortly before the end of the financial year. They should, if possible, be presented before the vote on account and the main estimates for the following year are published, as they enter into the figures of expenditure for the current year, which are shown in both those estimates

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(*b*) In consequence of the difficulty experienced in getting the supplementary estimates voted in session 1901 a revised estimate stating in one sum the supplementary amount still required for civil services for the year ending 31 March, 1901, was presented, following the form used in the case of the army and navy supplementary estimates and the vote on account. This change in the form of the supplementary estimates for civil services was discussed on a motion for the adjournment of the House, C. J. (1901) 82. See also the Speaker's remarks, Parl. Deb. (1901) 91, c. 261, 1161. The civil services supplementary estimates were presented in this form in the following session, when the matter was again discussed on a motion for the adjournment of the House, and a revised estimate in ordinary form of the separate supplementary sums required for the various civil services was presented. C. J. (1902) 42, 55, 57; Parl. Deb. (1902) 102, c. 876, 1001.

for the purpose of comparison with the figures of expenditure for the coming year.

(2) SUPPLEMENTARY ESTIMATES DUE TO DECISIONS OF POLICY

Supplementary estimates, which are due to decisions of policy involving fresh expenditure taken since the presentation of the main estimates, are presented usually in July, voted on allotted days or under the supply "guillotine," and financed by issues authorized by the Appropriation Act. They may also be presented after the passage of the Appropriation Act—in the autumn or towards the end of the financial year—and are then financed by means of Consolidated Fund Bills, and appropriated in the following financial year.

Certain supplementary estimates, presented before the passing of the Appropriation Act, which are for "new services" or "new matter" not included in the main estimates (see below), are labelled "new services" for the purpose of ensuring compliance with the provisions of paragraphs (2) and (9) of S.O. No. 14. If supplementary estimates for such purposes are presented after the passing of the Appropriation Act, when S.O. No. 14 is not in operation, they are not labelled "new services."

"New Services."—The provisions of S.O. No. 14 which prescribe the procedure on such supplementary estimates are as follows:—

Under paragraph (2) "days occupied by the consideration of . . . supplementary or additional estimates . . . for any new *service* not included in the *ordinary* estimates for the year shall not be included in the computation of the twenty [allotted] days."

Under paragraph (9) "any additional estimate for any new *matter* not included in the *original* estimates for the year shall be submitted for consideration in the Committee of Supply on some day not later than two days before the Committee is closed."

The purpose of these two provisions was evidently that expenditure of a novel kind should not be voted without discussion.

The questions that have had to be determined in applying these provisions are:

(a) What kind of novel expenditure is covered by "new service," and, do paragraphs (2) and (9) refer to the same thing or different things?

(b) How the directions of paragraphs (2) and (9) are to be interpreted.

(a) *Meaning attached to "New service."*—Little light is thrown on this question by the definitions contained in paragraphs (2) and (9) of S.O. No. 14. That they were intended to be definitions and, further, definitions of different things is apparent from the debates in the House on the adoption of the standing order (c).

It seems, however, to have been impossible in practice to establish any distinction between "new service not included in the ordinary estimates of the year" and "new matter not included in the original estimates of the year." Consequently any supplementary estimate which is labelled "new service" is treated as falling both under paragraph (2) and under paragraph (9) of the standing order. The principles on which an estimate is decided to be a "new service" may be stated generally as follows. A supplementary estimate which cannot be brought under any vote of the main estimate or

(c) Parl. Deb. (1902) 106, c. 1274 *et seq.*; *ibid.* (1902) 107, c. 54 *et seq.*

can only be so brought by extending the "ambit" of a vote as defined in Part I of that vote, is generally a "new service." So also is a service which, while capable of being brought under a vote in the main estimate without an extension of Part I, yet clearly in substance is an "item" of a novel character. In a matter about which language of greater precision is impossible, a decision is arrived at in each individual case principally on the basis of previous decisions. It may be added that the term used in the standing order for estimates for "new services"—"additional"—is no longer employed, and such estimates are entitled "supplementary," like the more usual estimates, referred to above, which are due to the revealed insufficiency of the sums demanded for ordinary services.

(b) *Application in practice of paragraphs (2) and (9) of S.O. No. 14.*—

The practice is governed by a decision of the Chair (*d*) the effect of which is that the requirement of paragraph (9) of the standing order (which directs such an estimate to be "submitted for consideration in Committee of Supply on some day not later than two days before the committee is closed") is held to be satisfied by merely inserting in the Order Paper notice of the vote in question, on a day which observes the prescribed interval, even though the House does not on that day go into Committee of Supply.

"New services" are regularly voted under the "guillotine" on the last but one of the allotted days in conjunction with the other votes of the class to which they belong. It is true that for this purpose it is necessary to suspend the operation of paragraph (2) of S.O. No. 14, the motion for effecting which is debatable.

#### SUPPLEMENTARY ESTIMATES FOR THE DEFENCE SERVICES

Supplementary estimates for the navy, army, and air services are comparatively seldom needed for making up revealed deficiencies, since these departments are permitted to apply surpluses for this purpose (see p. 644). But they have been presented to meet increased expenditure (*e*) caused by military operations, and to provide for an increase of the numbers of the navy (*f*), army (*g*), and air force (*h*). This method of placing before Parliament the demand for increased expenditure created by such an occasion, has been adopted in preference to a vote of credit (see p. 683), when a fairly definite estimate could be formed of the amount that would be required, and of the general heads under which that expenditure would fall (*i*).

**Supplementary Estimates involving reductions in original Estimates.**—When a supplementary estimate of a defence department (which, as stated on p. 678, may cover all the votes comprised in the original estimates of the department) involves a reduction of certain original estimates as well as an increase of others the procedure is somewhat different according to whether the estimate is presented after or before the passing of the Appropriation Act.

(*d*) Parl. Deb. (1901) 99, c. 159-60 and 363-66.

(*e*) C. J. (1884-85) 26, 27, 89; *ibid.* (1899) 435; *ibid.* (1900) 50, 355.

(*f*) C. J. (1901) 58; *ibid.* (1912-13) 289; *ibid.* (1914) 426; *ibid.* (1914-16) 42, 163, 334; *ibid.* (1917-18) 15, 251; *ibid.* (1938-39) 14, 365.

(*g*) C. J. (1882) 407; *ibid.* (1884-85) 89, 315; *ibid.* (1899) 435; *ibid.* (1900) 47; *ibid.* (1901) 69; *ibid.* (1914) 426, 457; *ibid.* (1914-16) 9, 312; *ibid.* (1916) 244; *ibid.* (1938-39) 303.

(*h*) C. J. (1921) 85; *ibid.* (1938-39) 335.

(*i*) Parl. Deb. (1884) 285, c. 672, 873.

When such an estimate is presented in March after the Appropriation Act has been passed, anticipated savings on any votes are set off against anticipated increases of expenditure on other votes and the net additional sum only is voted (*k*). In July, before the Appropriation Act has been passed, on any day other than the last day allotted to Committee of Supply, the net additional sum only is voted, even if one or more of the votes which it is sought to reduce has already been voted by the committee (*l*); but a schedule is attached to the supplementary estimate showing for each original vote the sum by which it is increased or reduced. If, however, such a supplementary is taken on the last day allotted to Committee of Supply, the supplementary sums are, according to the general practice, added to or subtracted from the figures of the original votes so as to secure a comprehensive figure for all the outstanding votes of that service (*m*).

In conclusion it may be mentioned that in the Appropriation Act a vote that has been increased by a supplementary is scheduled as "including a supplementary sum of £x," while one that has been reduced is scheduled as a "revised sum" (*n*). The latter is the case whether the reduction has been due to a saving in expenditure or to an increase of the sum appropriated in aid.

#### TOKEN VOTES (SUPPLEMENTARY)

The occasions on which a "token" supplementary vote is required are the following :—

(1) When it is desired to incur expenditure on a service which is not within the ambit of Part I of the estimate, although the additional expenditure can be fully covered by savings on other sub-heads.

Here a token sum is demanded, the additional expenditure being shown in gross under its appropriate sub-heads and the savings (allocated by sub-heads) shown as a deduction therefrom.

(2) If expenditure in excess of an original gross estimate can be covered by increased receipts, parliamentary authority, necessary for the use of receipts in excess of those appropriated in aid, is obtained by presenting a token supplementary estimate showing the increase in gross expenditure and, as a deduction, the increase in appropriations in aid.

(3) A token supplementary is also resorted to when it is necessary to secure parliamentary authority for a new service, the cost of which is to be met by a special contribution from non-public sources, and

(4) When it is proposed to make a material change in the conditions under which an original grant has been voted, and even though the change in conditions may not require the specific approval of Parliament.

The conventional amount demanded for a token supplementary vote is in accordance with a recommendation of the Public Accounts Committee

(*k*) Navy Supplementary Estimate, 1927, C. J. (1928) 69; *ibid.* 1937, C. J. (1937-38) 162; Air Supplementary Estimate, 1937, C. J. (1937-38) 155.

(*l*) Air Supplementary Estimate, 1935, C. J. (1934-35) 307; *ibid.* 1938, C. J. (1937-38) 372.

(*m*) Navy Supplementary Estimate, 1925, C. J. (1924-25) 37; *ibid.* 1938, C. J. (1937-38) 384.

(*n*) Appropriation Act, 1938, Sch. (B), Parts 6 and 7.

in 1930 (see p. 674) usually £10, £100 being reserved for token original estimates.

#### SUPPLEMENTARY NOT TAKEN BEFORE MAIN ESTIMATE

It is unusual procedure to obtain a supplementary vote before the main estimate, to which it is attached, is voted. Normally, the two are taken together as a single vote including the supplementary. In the case, however, of a supplementary estimate for the Ministry of Labour in 1933, authority to spend money under which was required on 1 July, a vote was taken before that date while the main estimate remained "open" (for purposes of discussion as is usually the case) until the conclusion of the "allotted" days.

A supplementary estimate for a defence service, however, which is of an "omnibus" character and contains reductions of certain votes as well as increases of others may be taken before and apart from certain of the original estimates to which it is supplementary (*o*).

#### 4. EXCESS GRANTS

The need for an excess grant arises when a department has carried expenditure upon a service beyond the amount granted to that service, during the financial year for which the grant was made.

The title of this class of estimate attests the nature of the grants; and to place on record a permanent disapproval of these departmental excesses, the Commons resolved, 30 March 1849, that "when a certain amount of expenditure for a particular service has been determined upon by Parliament, it is the bounden duty of the department which has that service under its charge and control, to take care that the expenditure does not exceed the amount placed at its disposal for that purpose." (*p*)

As is indicated above, the facility for presenting supplementary estimates is in normal cases sufficient to prevent a department being put in the position of exceeding in the course of a financial year the supply granted for its needs by Parliament. The need, however, of excess expenditure may be unavoidable in the closing weeks of the financial year when, owing to the state of parliamentary business, it may be impossible to get a supplementary estimate voted in time to be covered by the final Consolidated Fund Act of the financial year. In this case the excess must be voted in the following year—and this is necessary even if a department has been able to cover such excess expenditure by an increase in its receipts over the estimated appropriation-in-aid. In the latter case, in order to preserve parliamentary control, a "token" sum of £10 is demanded.

#### NAVY, ARMY, AND AIR EXCESS GRANTS

A demand for an excess grant by the navy, army, and air departments has been of exceptional occurrence, as under the privilege, which has been explained (see p. 644), the navy, army, and air force have the power of applying the surpluses they can save out of any of the grants made to

(*o*) Air Supplementary Estimate, 1938, C J (1937-38) 372.

(*p*) C J. (1849) 190.

their services to meet excess expenditure made upon other grants, in cases where such expenditure is of public advantage. An excess grant is required, however, in the case of a defence service whenever its total expenditure for the year has exceeded that provided in its estimates. When the excess of expenditure has been met by the increase in the total of extra receipts over the amount that they were estimated to produce, only a token sum is taken.

#### PROCEDURE ON EXCESS GRANTS

Demands for excess grants are not brought before the House of Commons until the following steps have been taken. When the exact amount of the excess expenditure for the past financial year has been ascertained on the completion of the audit of the appropriation accounts, the Comptroller and Auditor-General reports to the House and this report comes before the Public Accounts Committee. After examination, that body makes a report to the House, if possible in March of the financial year following that in which the excess occurred, setting out the various excesses with the reasons for them and stating the objections (if any) to their being approved. The Treasury then presents a Statement of Excesses, setting out all the instances of the excess expenditure for the year in question, which is presented to the Committee of Supply as a single vote for each branch of the estimates in which excess expenditure has occurred. When voted in committee and agreed to on report, and when the consequential stages of ways and means have been taken (see p. 707), the vote is included in the March Consolidated Fund Bill (*q*), and receives final sanction in the Appropriation Act.

### 5. VOTES OF CREDIT

Unexpected demands upon the resources of the United Kingdom for the defence of the Empire, or for a military undertaking, which on account of the magnitude or indefiniteness of the service cannot be stated with the detail given in an ordinary estimate, are brought before Parliament by an application, based on an estimate of the total sum required, for a vote of credit (*r*). Sums obtained upon a vote of credit are, like other grants of supply, available solely during the financial year in respect of which the grant is made (*s*).

As stated on p. 680 it has been found possible to some extent to cover the expenses of the defence services during a war by supplementary estimates. But during the war years 1914-18 and also from 1939 onwards it was found necessary to resort to votes of credit owing to the impossibility of defining the amount and purpose of the expenditure required with sufficient accuracy for an estimate and without some disclosure of military preparations (*t*).

(*q*) On two occasions, in order to give facilities for further discussion, excess votes have not been taken until a late date in the session, C. J. (1902) 402; Parl. Deb. (1902) 104, c. 296; C. J. (1903) 378; see also *ibid.* (1943-44) 152.

(*r*) C. J. (1856) 209; *ibid.* (1882) 407; *ibid.* (1885) 173; *ibid.* (1914) 426; *ibid.* (1914-16) 8, 66, 145, 206, 234, 281; *ibid.* (1916) 8, 9, 88, 163, 223, 273; *ibid.* (1918) 25, 116, 177, 231. The practice of demanding a vote of credit by a message from the Crown, *h*as, since 1854, *ibid.* (1854) 432, been discontinued.

(*s*) Parl. Deb. (1884) 285, c. 875.

(*t*) See explanatory notes in Cmd. 6176, Cmd. 6198, Cmd. 6279, and Cmd. 6363.



The form of a vote of credit is a demand for a lump sum with the objects stated in very general terms. It is accounted for by the Treasury, which issues money to the departments in accordance with their requirements so far as they fall within the scope of the objects for which the vote of credit has been granted. During the war years 1914-18 and from 1939 onwards the services unconnected with the war were provided for by ordinary estimates, and no grants out of the vote of credit were applicable to such services. Several votes of credit were taken in each of those years, and each such vote was confirmed by a Consolidated Fund Bill; in the war of 1914-18, the Appropriation Act was delayed till late in the autumn, but in the war of 1939-45 a second or third Appropriation Act was passed shortly before the end of the session (*u*).

As is stated more fully below (p. 687), a vote of credit may not be taken on an allotted day, and the question for the Speaker leaving the Chair provides an opportunity for moving an amendment or raising a question relating to the vote before the House goes into Committee of Supply on a vote of credit (S.O. No. 16).

## 6. EXCEPTIONAL GRANTS

"Exceptional grants" is a term which covers several different kinds of expenditure of an unusual character. These grants form a class of financial business which is midway between estimates and money resolutions (see p. 718).

They may be classified roughly as follows :—

(1) Demands for pecuniary aid for the maintenance of the dignity or well-being of the Crown (*a*) or for the reward of distinguished public service. Examples of the first class are the provision for the Civil List on the demise of the Crown or for the marriage portion or annuity of a royal princess; of the second, the grants to distinguished naval, military, and air commanders, in 1919. Demands for pecuniary aid for these purposes are made by messages from the sovereign, bearing the sign manual (*b*), which are presented to both Houses of Parliament if possible on the same day (see p. 763), the form of the message being varied so as to ask for a grant from the Commons and concurrence in such grant from the Lords. The reply of the Lords takes the form of an address of thanks expressing concurrence. The demand for the grant is brought before the Commons by a resolution proposed either in a Committee of the whole House appointed to take the royal message into consideration, or in Committee of Supply (where it takes the place of an estimate) according to the nature of the demand. The Civil Lists of 1936 and 1937 are instances of the former procedure (*c*) the grants voted from time to time to distinguished

(*u*) *e.g.* In session 1941-42, the Appropriation Act received the Royal Assent on 6 August, the second Appropriation Act on 11 September and the third on 22 October.

(*a*) C. J. (1901) 60; *ibid.* (1910) 171 (Civil Lists); *ibid.* (1830-31) 719 (Duchess of Kent and Princess Alexandrina Victoria of Kent); *ibid.* (1850) 539 (Duke of Cambridge); *ibid.* (1857) 153 (Princess Royal); *ibid.* (1863) 69 (Prince of Wales), resolutions agreed to *nem. con.*; *ibid.* (1889) 290 (Prince Albert Edward). . . .

(*b*) C. J. (1857) 153; *ibid.* (1866) 99; *ibid.* (1889) 355.

(*c*) C. J. (1935-36) 207; *ibid.* (1936-37) 258.

soldiers and public servants, of the latter (*d*). By a combination of both methods the marriage portion of the Princess Royal in 1857 was voted upon estimate by the Committee of Supply, while the annuity granted to her was charged upon the Consolidated Fund in pursuance of a resolution originating in Committee of the whole House (*e*). The legislative authorization of such grants varies in the usual way, according to the method adopted for bringing them before the House, grants voted in Committee of Supply being authorized by the Appropriation Act; those voted by a Committee of the whole House, by special Acts.

(2) Demands for expenditure which is "exceptional" in the sense that it is novel and non-recurrent. The procedure on such demands is not in any way abnormal. Either they are presented by estimate and referred to the Committee of Supply, or they are brought before a Committee of the whole House in the form of a resolution with the King's recommendation. Which of the alternative forms should be used depends upon the nature of each particular case, and the question should be decided according to whether the purpose for which the grant is demanded is, or is not, covered by existing administrative powers (see p. 712). The grant of £20,000,000 for the abolition of slavery in British colonies (*f*), was voted in Committee of the whole House, and so in the past have been grants for fortifications and works (*g*). On the other hand the grants for the purchase of the Suez Canal shares (*h*), and for loans to allied foreign countries in 1919 and 1920 (*i*) were voted on estimates in Committee of Supply.

(3) Grants for certain national purposes, presumed to be generally acceptable, such as a monument to a deceased statesman and provision for a retiring Speaker, are initiated by an address of the House of Commons. This procedure is explained in the next chapter (see p. 726).

## B. THE VOTING OF SUPPLY

### I. COMMITTEE OF SUPPLY

#### ACTION OF THE COMMONS ON ROYAL DEMAND FOR SUPPLY

The action taken by the House of Commons upon the demand of aid and supply for the public service made by the speech from the throne (see p. 274), is the appointment, pursuant to S.O. No. 13, of those Committees of the whole House, which are known as the Committee of Supply and the Committee of Ways and Means. Motions setting up these Committees are made without notice immediately after the House agrees to the address in answer to the speech from the throne, and are put

(*d*) C. J. (1864) 293; *ibid.* (1899) 230; *ibid.* (1902) 261, *ibid.* (1901) 352; *ibid.* (1907) 353-54; *ibid.* (1918) 23; *ibid.* (1919) 282. Where the grant has been in the form of a pension it has been voted in a Committee of the whole House, C. J. (1857-58) 9, 11; *ibid.* (1864) 293; *ibid.* (1883) 141.

(*e*) C. J. (1857) 170, 175.

(*f*) C. J. (1833) 383, 482.

(*g*) C. J. (1860) 403, 441, etc. Such grants are now demanded by estimate.

(*h*) C. J. (1876) 55

(*i*) C. J. (1919) 270; *ibid.* (1920) 345.

forthwith from the chair, no debate being permitted thereon (*k*). In these committees the financial duties of the House of Commons are mainly discharged.

#### DAYS OF SITTING OF COMMITTEES OF SUPPLY AND WAYS AND MEANS

By a custom nearly as ancient as the institution of the Committees of Supply and Ways and Means, these committees were placed among the orders of the day for every Monday, Wednesday, and Friday (*l*), and the sitting of the committees was formerly restricted to those days. This restriction is no longer in force. S.O. No. 15 now provides that these committees may be set down for any day on which the House meets for the despatch of business.

#### INSTRUCTIONS TO COMMITTEE OF SUPPLY

An instruction to the Committee of Supply cannot be moved, as, following the Speaker's ruling, "nothing can be brought on in that committee of which notice has not been given in detail, by the estimates laid before the House" (*m*) (see p. 664).

#### ALLOTTED DAYS AND SUPPLY GUILLOTINE

The existing arrangements for the allocation of time to the discussion of the estimates (which were instituted experimentally in 1896 and adopted as a standing order in 1902) are the outcome of a long struggle between Ministers and the House. Governments, of whatever complexion, had been tempted to postpone the discussion of the estimates till their own programme of legislation was completed; and the House had attempted to counter this tendency by making one day each week a compulsory supply day. The present arrangement may be regarded as on the whole a satisfactory compromise. It secures a definite number of days each session for the business of supply, and prevents its postponement beyond the early days of August. Some remarks on the effect of the change which has taken place in the function performed by discussion in Committee of Supply and on the bills arising out of it, and also upon the convention whereby the matters to be discussed are selected by the Opposition, will be found in Chapter XIV, pp. 285-6, 287-8.

#### PROCEDURE UNDER S.O. NO. 14

As S.O. No. 14, which regulates this allocation of time, is long and detailed, it is here set out in full, with notes explaining its practical working added at the end of each paragraph.

(1) Twenty days (i) and no more (unless as hereinafter provided) (ii) being days before the 5th August, shall be allotted for the consideration of the annual navy, army, air, and civil estimates, including votes on account. The days allotted shall not include any day on which the question has to

(*k*) Debate has been permitted when the appointment of those committees has been made out of the ordinary course of routine, *e.g.* when the Committee of Ways and Means was re-opened by way of reply to a message under the sign manual, C. J. (1930-31) 407.

(*l*) C. J. (1693-97) 98, 501.

(*m*) Mirror of Parliament, 1828, p. 1972.

be put that Mr. Speaker do leave the chair, or any day on which the business of supply does not stand as first order.

(i) For the purposes of this standing order two Fridays are deemed equivalent to a single sitting on any other day (para. (10) of this order). The number of allotted days has been reduced in sessions 1914-16, 1916, and 1917-18 to seventeen, fifteen and sixteen days respectively, C. J. (1914-16) 196; *ibid.* (1916) 171; *ibid.* (1917-18) 181. In 1929, in view of a dissolution in the early summer, the number of allotted days was reduced to thirteen, C. J. (1928-29) 251. In 1938-39, owing to congestion of business due to the international crisis, the number of days was reduced to sixteen and one Friday was deemed equivalent to a single sitting, C. J. (1938-39) 359, 366. In 1916 and in 1917-18 it was also provided that the allotted days might be either before or after 5 August.

(ii) See paragraph (3), *infra*.

(2) Provided that the days occupied by the consideration of estimates supplementary to those of a previous session (i) or of any vote of credit, or of votes for supplementary or additional estimates presented by the Government for war expenditure, or for any new service not included in the ordinary estimates for the year (ii), shall not be included in the computation of the twenty days aforesaid.

(i) Parl. Deb. (1906) 154, c. 398, 642.

(ii) For explanation of the term "new service," see p. 679.

Supplementary estimates for new services and excess votes have been allowed by order of the House to be taken on an allotted day, C. J. (1913) 310; *ibid.* (1918) 187; *ibid.* (1921) 199, 314; *ibid.* (1922) 74; H. C. Deb. (1922) 152, c. 478; C. J. (1922) 299; *ibid.* (1923) 303, or after the time for the interruption of business on an allotted day, *ibid.* (1903) 377.

(3) Provided also that on motion made after notice, to be decided without amendment or debate, additional time, not exceeding three days, may be allotted for the purposes aforesaid, either before or after 5 August.

The motion for this purpose, if moved by the Government, is set down at the commencement of public business, C. J. (1902) 375; *ibid.* (1921) 240; *ibid.* (1922) 280.

(4) On a day so allotted, no business other than the business of supply (i) and the consideration of the reports of the committee of public accounts and the select committee on estimates shall be taken before eleven, and no business in committee or proceedings on report of supply shall be taken after eleven, whether a general order exempting business from interruption under the standing order (Sittings of the House) is in force or not, unless the House otherwise order on the motion of a minister of the crown, moved at the commencement of public business, to be decided without amendment or debate (ii).

(i) Business of supply includes the reports of the Committee of Supply as well as the committee itself, Parl. Deb. (1902) 108, c. 1004, and ancillary Ways and Means business, Parl. Deb. (1906) 153, c. 1436.

(ii) If without a special permissive order of the House other business is taken before eleven o'clock or business of supply is taken after eleven, the day cannot be reckoned as an allotted day—it is said to be "spoilt." By practice a motion for the adjournment of the House moved before the business of supply has been entered on, or at its conclusion, or under S.O. No. 8, or opposed private business set down for half-past seven o'clock, can be taken without spoiling an allotted day.

When it has been desired not to take supply on a day allotted to it, the order of the day relating to supply has been read and deferred and the day has not been included in the allotted days, C. J. (1917-18) 196 ; H. C. Deb. (1917-18) 97, c. 867.

(5) Of the days so allotted, not more than one day in committee shall be allotted to any vote on account, and not more than one day to the report of that vote. At eleven on the close of the day on which the committee on that vote is taken, and of the day on which the report of that vote is taken, the chairman or Mr. Speaker, as the case may be, shall forthwith put every question necessary to dispose of the vote or the report.

The question is put at eleven o'clock, although the business of supply may have been anticipated by a motion for the adjournment of the House (see p. 687), C. J. (1917-18) 46, 48 ; H. C. Deb. (1917-18) 91, c. 1866.

The report of the vote on account has been taken on a Friday, C. J. (1910) 565. But this now appears to be inconsistent with paragraph (10) of the standing order. Prior to 1933 (when the standing order was amended) not more than one *sitting* was allotted to the report of the vote on account, and by an arrangement in force from 1902 to 1905, days other than the short day of the week were divided into two sittings.

(6) At ten of the clock on the last day but one of the days so allotted the chairman shall forthwith put every question necessary to dispose of the vote then under consideration, and shall then forthwith put the question with respect to each class of the civil estimates that the total amount of the votes outstanding in that class be granted for the services defined in that class (i), and shall in like manner put severally the questions that the total amounts of the votes outstanding in the navy, the army, the air, and the revenue departments estimates be granted for the services defined in those estimates (ii).

(i) The Chairman, in putting these questions, states the total amount remaining to be voted for each class, but not the individual amounts and services, Parl. Deb. (1901) 99, c. 139.

(ii) A motion is usually made at the commencement of public business on the last of the days allotted to the Committee of Supply, to enable other business to be taken before eleven o'clock as soon as supply is concluded, C. J. (1907) 376. On the last allotted day other business can be taken without any such order, if all the reports of supply are agreed to before eleven o'clock, C. J. (1914-16) 218 ; *ibid.* (1916) 188 ; *ibid.* (1922) 310 ; H. C. Deb. (1922) 157, c. 810. The most recent practice, however, is to make an order (C.J. (1938-39) 385, 391).

(7) At ten of the clock on the last, not being earlier than the twentieth, of the allotted days, Mr. Speaker shall forthwith put every question necessary to dispose of the report of the resolution then under consideration, and shall then forthwith put, with respect to each class of the civil estimates, the question, that the House doth agree with the committee in all the outstanding resolutions reported in respect of that class, and shall then put a like question with respect to all the resolutions outstanding in the navy, the army, the air, the revenue departments estimates, and other outstanding resolutions severally.

On 4 August 1914, these questions were put by the chairman, pursuant to an order of the House, as soon as the House had resolved itself into Committee of Supply, and on the following day the corresponding questions on

report of supply were put forthwith on the order of the day for receiving the report being read, C. J. (1914) 412, 417, 418. In session 1918 eleven o'clock was substituted for ten o'clock as the time for concluding supply on the last two allotted days, C. J. (1918) 187, 192. On 10 and 15 August, 1916, and 7 and 8 May 1929, the last two allotted days, these questions were rendered unnecessary as the business both in committee and on report of supply was completed before 10 o'clock, while on the 21 July 1915, and 27 July 1922, the reports of supply were completed before 10 o'clock.

If it is desired to give an opportunity for the discussion of certain votes after the days allotted to supply have passed, the reference of such votes to the Committee of Supply is discharged. The Committee of Supply is not closed and the votes are referred to it again after the allotted days are finished, C. J. (1917-18) 185, 197. A Supplementary Estimate for £10,000,000 (coal subsidy) was considered in Committee of Supply on 6 August 1925. Following an Instruction to the committee on the Consolidated Fund (Appropriation) Bill an amendment was made in the Appropriation Bill to cover this sum, C. J. (1924-25) 387, 389 (see p. 712). When a vote has been proposed on the last of the days allotted to Committee of Supply and an opportunity of further discussion has been desired the question on the vote has been withdrawn, C. J. (1919) 268, 397; H. C. Deb. (1919) 118, c. 2323.

(8) On the days appointed for concluding the business of supply, the consideration of that business shall not be anticipated by a motion of adjournment, and no dilatory motion shall be moved on proceedings for that business and the business shall not be interrupted under any standing order.

In view of this provision a count of the House has been refused on such a day, Parl. Deb. (1898) 64, c. 567; H. C. Deb. (1911) 8, c. 1637. Opposed private business may, however, be taken at half-past seven, *e.g.*, C. J. (1932-33) 308.

(9) Any additional estimate for any new matter not included in the original estimates for the year (i) shall be submitted for consideration in the Committee of Supply on some day not later than two days before the committee is closed (ii).

(i) See p. 679 for an explanation of "new matter."

(ii) That is to say, the estimate must be upon the notice paper as an effective supply vote on a day not later than two days before the committee closes, Parl. Deb. (1901) 99, c. 159, 363; H. C. Deb. (1920) 132, c. 2043, 2206.

(10) For the purposes of this order two Fridays shall be deemed equivalent to a single sitting on any other day.

When use is made of this provision "1st part" and "2nd part" appear after the number of the allotted day in the notice paper and the Journal (13 and 20 July 1934), and there is nothing to prevent subsequent allotted days being sandwiched in between the first and second part of an "allotted day" constituted by two Friday sittings.

#### PROCEDURE ON THE SPEAKER LEAVING THE CHAIR

S.O. No. 16 provides that whenever the Committee of Supply is to be taken the Speaker shall leave the chair without putting any question, unless on first going into supply on the navy, army, air force, or civil estimates respectively, or on any vote of credit, an amendment be moved, or question raised, relating to the estimates proposed to be

taken in supply. He therefore quits the chair without question put when notice has been given for the consideration of estimates for supplementary or excess grants or of a vote on account or of votes included in a branch of the estimates for the current year in respect of which the question for his leaving the chair has been already agreed to, and also even on first going into Committee of Supply on one of the four main branches of the estimates or on a vote of credit, if neither an amendment is proposed to be moved nor a question raised relating to the branch or vote (*n*).

The question for the Speaker leaving the chair should not be proposed (*o*) unless the estimates belonging to the relevant branch have been presented and circulated, though circulation has been waived under exceptional circumstances (*p*), and in one case on the understanding that the motion would be withdrawn or negatived when the First Lord of the Admiralty wished to make his statement before publication of the estimates, which were unusually large, in order not to alarm foreign opinion (*q*).

In a new Parliament the Speaker leaves the chair without putting any question for Committee of Supply on estimates supplementary to those voted in the last Parliament, *Parl. Deb.* (1900) 88, c. 213. The Speaker adopted the same course when it was necessary to re-open the Committee of Supply in 1902 (*Parl. Deb.* (1902) 114, c. 211).

The opportunity which (in a limited form), S.O. No. 16 still provides for a debate in the House before going into Committee of Supply is to be explained as a survival of the ancient doctrine that the redress of grievances should be considered before the grant of supply. This is a very important constitutional principle, and it would be regrettable if the curtailment of the opportunity for considering grievances in the House itself, effected by this standing order, really involved a serious impairment of the principle. This is, however, not the case. The change has only been a change of procedure resulting from a changed conception of the functions of the Committee of Supply. Whereas, up to fifty years ago, the criticism of administrative policy was intended to take place in the House and the proper function of the Committee of Supply was regarded as purely financial; now such criticism is conducted by the Committee of Supply itself, which is frankly recognized by reason of its size and fluctuating personnel as better fitted to perform political rather than strictly financial functions—or, in rather more precise language, to use its financial power for advocating changes in policy rather than for effecting administrative economies. This latter function is left to smaller bodies set up in modern times, such as the Public Accounts Committee and the Estimates Committee. The retention by S.O. No. 16 of a vestige of the ancient form is to be explained by the conservative attitude of the House of Commons towards established procedure; and it is doubtful whether it serves any very useful purpose, since the question for the Speaker leaving the chair does not permit the debate of any wider issues than can be raised in Committee of Supply on the corresponding branch of the estimates, and since especially in the case of the defence estimates (where a review of the whole service is permitted in committee on the vote for men) the debate in the House and the debate in committee raise precisely the same questions and

(*n*) C. J. (1914) 426; *ibid.* (1916) 206, 247, etc.

(*o*) H. C. Deb. (1915) 75, c. 1191.

(*p*) H. C. Deb. (1922) 151, c. 2231, 2409.

(*q*) *Parl. Deb.* (1899) 68, c. 305.

lead to an infraction of the rule (which is generally valid) that House and committee have different purposes and should not interfere in each other's discussions, or answer each other's arguments (r). So far as the debate on the Speaker leaving the chair differs from the debate in Committee of Supply the disadvantage is with the former, since its rules are more rigid; and when the amendments which are permitted to the question (see below) are moved they narrow its scope and tend to make it academic and even somewhat perfunctory. In spite of this, perhaps because of the more "full dress" air of a debate with the Speaker in the chair, the general statements of Ministers in opening their estimates seem to be made by preference in the House rather than in committee. It should be added that the procedure on the civil estimates differs from that on the estimates for the defence services in that no general statement is made by a Minister, but the amendment enjoying precedence as a result of the ballot (see next paragraph) is moved directly after the question for the Speaker leaving the chair has been moved.

#### AMENDMENTS ON GOING INTO COMMITTEE OF SUPPLY

On first going into Committee of Supply on one of the main branches of the estimates, referred to above, amendments relating to that branch are set down on the Order Paper in the form of motions, but are moved in the form of amendments to the question "That Mr. Speaker do now leave the chair" proposing to leave out all the words after "That" and substitute a new proposition. Under established usage precedence in moving such amendments is secured by ballot (see p. 350), and an amendment can only be moved by the Member in whose name it stands. In ordinary circumstances only the Member who secured first place on such an occasion has the opportunity of moving his amendment, for after the first amendment has been disposed of the debate returns to the question "That Mr. Speaker do now leave the chair." This is necessarily the case if the first amendment has been negatived, because then the words "That Mr. Speaker do now leave the chair," have been ordered to stand part of the question, and no amendment proposing to substitute other words is any longer in order. But it is by present practice the case also when the first amendment has been withdrawn. Whichever way the amendment has been disposed of, debate on the main question can then be resumed by those Members who have not already spoken to that question (see p. 423).

A subject which has been discussed on the amendment cannot be raised again on the main question, *Parl. Deb.* (1906) 161, c. 619.

**Relevancy of amendments on going into committee.**—In the debate on amendments to the question for the Speaker's leaving the chair, relevancy to the branch of the estimates of which notice has been given is strictly enforced, and they should not raise matters of detail which are more properly dealt with in Committee of Supply. Nor can matters which involve legislation or the action of persons whose salaries are payable out of the Consolidated Fund, or whose conduct cannot be canvassed save on a substantive motion (see p. 375), be raised by such amendments.

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(r) But in 1928 it was ruled that questions raised on the motion for the Speaker leaving the chair might not be answered in committee (*H. C. Deb.* (1928) 214, c. 1661)



**Debate on going into Committee of Supply.**—The ordinary rules of debate (see p. 417) are applicable on this occasion. For instance, a matter which should be considered upon a substantive motion (see p. 375), or which would anticipate a more effective form of proceeding of which notice has been given (see p. 378) cannot be discussed (*s*). A subject, or matter of detail, which should be discussed in the committee, has been held to be out of order (*t*). As in Committee of Supply, matters involving legislation cannot be discussed on the question for the Speaker's leaving the chair (*u*).

PROLONGATION OF PROCEEDINGS ON FIRST GOING INTO COMMITTEE  
OF SUPPLY OVER MORE THAN ONE DAY

Normally the debate on the question "That Mr. Speaker do now leave the chair" on first going into Committee of Supply on one of the four main branches of the estimates is concluded by the House agreeing to that question towards the end of the sitting in which it is moved, and thereupon going into committee and transacting business in it. But the normal procedure is occasionally prevented by:

(1) the defeat of the question "That Mr. Speaker do now leave the chair" either directly (*a*) or through the acceptance of an amendment to it, or

(2) by the adjournment of the debate on the main question or upon an amendment to it.

(1) When the first type of circumstance arises the order of the day for Committee of Supply, thereby superseded, is revived by a motion, made forthwith, that the House will either immediately (*b*), or upon a future day (*c*), resolve itself into the Committee of Supply (*d*), for the Committee of Supply must be kept on foot throughout the session until all the estimates have been voted (see p. 708).

This course has also been followed on those occasions when, on a motion for the Speaker's leaving the chair the question "That the words proposed to be left out stand part of the question" has been negatived, and the House could not agree upon an amendment that should follow thereon. For instance, in 1865, four successive amendments having been tendered in vain for the acceptance of the House, an addition to the initial word "That" was accepted (see p. 394), whereby the sitting of the Committee of Supply was postponed to a future day (*e*); and, on another occasion, by words so added, the House immediately resolved itself into Committee of Supply (*f*).

(*s*) Parl. Deb (1856) 142, c. 1026; *ibid.* (1867) 189, c. 91; *ibid.* (1871) 207, c. 500  
*ibid.* (1886) 308, c. 1755.

(*t*) Parl. Deb. (1862) 165, c. 369; *ibid.* (1864) 173, c. 903; *ibid.* (1867) 189, c. 857  
*ibid.* (1872) 209, c. 1327. H. C. Deb. (1938-39) 345, c. 737

(*u*) Parl. Deb. (1907) 171, c. 1372.

(*a*) C. J. (1878) 330; *ibid.* (1923) 87; H. C. Deb. (1923) 162, c. 1170.

(*b*) C. J. (1883) 63; *ibid.* (1891) 172; *ibid.* (1893) 106.

(*c*) C. J. (1883) 168; *ibid.* (1888) 200; *ibid.* (1890) 284.

(*d*) The motion that the House would, on Monday next, resolve itself into the committee of supply was made, 27 May 1892, immediately after the debate on an amendment to the question for the Speaker's leaving the chair for committee of supply had been adjourned by interruption of business (see p. 303), C. J. (1892) 297.

(*e*) C. J. (1865) 379; Parl. Deb (1865) 180, c. 369-427.

(*f*) C. J. (1871) 416.

In 1936 when the House agreed (on division) to the omission of the words " Mr. Speaker do now leave the chair " and to the addition of the words of the amendment, but disagreed to the main question as so amended, the motion for the adjournment of the House was permitted to be moved and was agreed to (g).

Except on occasions when, under S.O. No. 16, the Speaker leaves the chair forthwith, the resolution for the immediate resumption of the Committee of Supply or its resumption on a future day compels the re-proposal of the question for the Speaker's leaving the chair; and a division has been taken against that question (h), and amendments moved thereto (i).

(2) When a debate is adjourned on first going into Committee of Supply, similar steps must be taken. The correct procedure is for the superseded order for the Committee of Supply to be immediately restored by a motion for the House to resolve itself on a future day into that Committee. Before that branch of the Estimates can be considered in committee the motion for the Speaker's leaving the chair must be again proposed.

It seems to be the better course of procedure not to carry forward an adjourned debate on the question " That Mr. Speaker do now leave the Chair " as an order of the day. Under S.O. No. 16 it is only on first going into supply on the four main branches of the estimates and on a vote of credit that the question needs to be proposed, and, if the order for the resumption of the adjourned debate were on the Paper, it would be necessary to ignore it on every occasion except when estimates belonging to the branch in respect of which the debate was adjourned were next put down for consideration. Even on this occasion it would seem better to propose the question again *de novo* by analogy with the practice of the Committee of Supply and other committees of the whole House, which treats as a new motion the resumed consideration of a question upon which on a previous day the committee has reported progress (see p. 573).

Since the various rules and considerations, which have to be borne in mind when the debate on the Speaker leaving the chair is not concluded at one sitting, are numerous and tend to produce awkward results, the procedure may be illustrated by the following cases:—

On 27 May 1892, on an amendment to the question " That Mr. Speaker do now leave the chair " (for the civil service estimates) the question " That the words proposed to be left out stand part of the question " was negatived, and the debate was adjourned on the question " That those words be there added." On 30 May, the House was to go into Committee of Supply on a vote on account, and, as for such an estimate the Speaker leaves the chair without question put (under S.O. No. 16) the order for the adjourned debate was removed from the Paper. On 10 June the Speaker also left the chair without question put on going into Committee of Supply on the civil service estimates (though this was the first occasion of going into Committee of Supply on those estimates). This procedure (on 10 June) seems doubtful. The rule may have been obscured by the fact that on that day the navy estimates were set down for consideration by the Committee of Supply before the civil service estimates, C. J. (1892) 297, 300.

(g) C. J. (1935-36) 158; H. C. Deb. (1936) 310, c. 2082-99.

(h) C. J. (1860) 267.

(i) C. J. (1923) 87, 88, 89; H. C. Deb. (1923) 162, c. 1243.

On 9 March 1893 an amendment proposed to the question "That Mr. Speaker do now leave the chair" (for the army estimates) was negatived, and the debate was adjourned on the main question. On the 11 March when the army estimates were again down for consideration in Committee of Supply, the order for the adjourned debate was removed from the paper, but the question "That Mr. Speaker do now leave the chair" was proposed, and a general debate continued upon it, though no other amendment was allowed to be moved in view of the fact that the House had negatived the amendment proposed on 9 March. C. J. (1893-94) 115, 119, 122. Notices of Motions, sess. 1893-94, pp. 645, 677, 709.

**Position of amendments on second day.**—When, for one of the reasons explained above, a second opportunity is provided for debating the question "That Mr. Speaker do now leave the chair" on the same branch of the estimates, it has generally been ruled that the amendments which secured precedence in the ballot and were not disposed of on the first occasion of debate on that question may be moved in their order (*k*).

#### RESUMPTION OF SITTING OF COMMITTEE OF SUPPLY

When the order of the day for the Committee of Supply becomes a dropped order by a sudden adjournment of the House, under the practice explained elsewhere (see p. 365), if necessity arises, the House at the next sitting immediately resolves itself into the Committee of Supply. Resolutions which have been come to at such a sitting before its interruption are reported by the chairman at the conclusion of the next sitting of the committee (*l*).

### 2. PROCEDURE IN COMMITTEE OF SUPPLY

#### NOTICE OF ESTIMATES TO BE CONSIDERED

When the transaction of business is desired, notice of the particular votes (identified by reference to their numbers in the respective branches, and, in the case of votes for civil services, in the respective classes of the estimates) which are intended to be submitted to the committee, is affixed to the order of the day.

The notice of an estimate was waived by the House, on 11 June 1886, under urgent circumstances; and similarly it has been held that estimates could be considered, public notice in the House having been given of an intention to take them, although notice to that effect had been accidentally omitted from the notice paper circulated to all the members of the House. Parl. Deb. (1889) 337, c. 425; *ibid.* (1899) 68, c. 449: see also *ibid.* (1896) 39, c. 283, and, for an objection upheld by the Speaker, H. C. Deb. (1927) 202, c. 1426, 1512; *ibid.* (1929-30) 235, c. 1709; *ibid.* (1930) 236, c. 653.

Permission to take a vote, which had been inadvertently referred to by a wrong number in the Orders of the Day published in the Blue Paper, has been refused, H. C. Deb. (1929-30) 236, c. 653.

#### FORM OF SUPPLY RESOLUTIONS

Each grant is placed before the Committee of Supply by a motion, which states the amount to be granted, and the particular service for which

(*k*) C. J. (1923) 87, 88, 89; H. C. Deb. (1923) 162, c. 1243; C. J. (1935-36) 196; H. C. Deb. (1935-36) 311, c. 311.

(*l*) C. J. (1877) 313, 321; *ibid.* (1907) 201; Parl. Deb. (1907) 174, c. 1166; C. J. 1918) 149, 157.

the sum is demanded. The amount to be granted is the total sum required for the service less any amount already granted by a vote on account and any appropriations-in-aid (see p. 674). The form the motion takes is, "That a sum, not exceeding £*x*, be granted to His Majesty, to [complete the sum necessary to] (*m*) defray the charge which will come in course of payment during the year ending on the 31st day of March, 19—, for " the services therein specified.

**Appropriations-in-aid** cannot be reduced in Committee of Supply (*n*), nor can the policy of such appropriations-in-aid, or the services on which savings have been made, if they are due to savings, be discussed (*o*).

**Form of motion for vote on account.**—The motion by which a grant on account is proposed follows the customary form. The motion states the total sum required; and the various amounts needed for each department, which compose that sum, are stated in a schedule appended to the resolution. The question proposed thereon from the chair follows the terms of the resolution, and places the total sum, the aggregate grant, before the committee for its decision; and upon that question amendments can be moved for the reduction of the whole grant (*p*), or for the reduction or the omission of the items whereof the grant is composed (*q*).

**Grants proposed by Ministers.**—The proposal of a motion for the grant of supply must be made by a Minister.

An exception was formerly made in the case of the grant for the British Museum, which might be moved by a Member who, as a trustee of the museum, was responsible for the administration of the grant, a petition for aid from the trustees having been presented to the House, under the recommendation of the Crown, and referred to the Committee of Supply (*r*).

#### ORDER IN WHICH VOTES MAY BE MOVED

Motions for a grant may be submitted to the committee in the order selected by the mover, and so arranged on the Notice Paper, without regard to the order and arrangement of the Estimates (*s*), or to any motion which was before the committee at a previous sitting and was not disposed of. The grants for future expenditure arising in an ensuing financial year can be voted before a supplementary grant to make good past expenditure which has arisen in the then current financial year. The committee can consider also at the same sitting both a vote on account and the vote itself for which the grant on account has been made (*t*).

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(*m*) These words are inserted when a vote on account has been taken in respect of a service. When a supplementary estimate has been presented before the original estimate has been voted, the amount of the grant demanded is increased by the amount of the supplementary grant and the words "including a supplementary grant of £*x*" are included in brackets after the figure of the grant so as to show the inclusive sum demanded.

(*n*) Parl. Deb. (1900) 82, c. 20.

(*o*) Parl. Deb. (1908) 183, c. 1455; *ibid.* 189, c. 1354; H. C. Deb. (1911) 22, c. 2612; *ibid.* (1914) 59, c. 329.

(*p*) C. J. (1877) 139.

(*q*) Parl. Deb. (1865) 178, c. 740.

(*r*) The last occasion was in 1883, Parl. Deb. (1883) 283, c. 877.

(*s*) Parl. Deb. (1873) 215, c. 1014.

(*t*) C. J. (1863) 140; *ibid.* (1877) 138.

Items may be voted separately.—A grant may be submitted to the decision of the committee, at the discretion of the mover, by a proposal of the items of which a grant is composed, in separate resolutions.

For instance, an estimate for the purchase of land at South Kensington comprised three items. The first item was moved as a separate grant, which was agreed to ; and the two other items, taken together, were proposed as another grant, which was negatived—a course which was pursued with the express sanction of the Chair (*u*). This course was also taken, during the session of 1890, regarding the grants for the household of the Lord Lieutenant of Ireland, and for the offices of his chief secretary, which were, in the first instance, proposed in a single resolution (*a*).

#### GENERAL RULES OF PROCEDURE IN COMMITTEE OF SUPPLY.

Except in the manner of proposing the question upon an amendment (see p. 697), the procedure of the Committee of Supply follows the ordinary usage of a Committee of the whole House. No amendment can be moved which is not relevant to the grant under consideration. The votes must be considered in the order in which they stand on the Paper. Any vote may be passed over and not moved ; but a motion for postponing a proposed resolution cannot be entertained. Each resolution for a grant forms a distinct motion, which can only be dealt with by being agreed to, reduced, negatived, superseded, or, by leave, withdrawn (*b*) ; and the withdrawal can be made, although the decision of the committee has been taken upon amendments proposed to the resolution. Here the power of the committee ceases. The committee may vote or refuse a grant, or may reduce the amount thereof, either by a reduction of the whole grant, or by the omission or reduction of the items of expenditure of which the grant is composed ; but the committee have no other function.

No increase of sums specified by the estimates.—The constitutional principle which vests in the Crown the sole responsibility for initiating national expenditure (see p. 653), and which forbids the Commons to increase the sums demanded by the Crown for the service of the State (see p. 639), is strictly enforced in the Committee of Supply.

For instance, it was held, 9 March 1863, that a Member could not move an addition to the number of men stated upon the Army Estimates, although apparently the grant for pay upon the Estimates provided for a number of soldiers larger than the number therein specified ; and analogous motions have been ruled out of order, although the proposed increase in the number of men was nominal, designed only for the correction of an alleged error in the Estimates (*c*).

No amendment can, therefore, be proposed, whether by a Minister of the Crown, or by any other Member, to increase the amount of a grant beyond the sum specified in the estimate. If such increase be necessary, a supplementary estimate must be presented or the original estimate must be withdrawn, and a revised estimate presented, though, according to modern practice, it is not customary to present a revised estimate for an increased amount (see p. 674).

(*u*) Parl. Deb. (1863) 171, c. 927.

(*a*) C. J. (1890) 466.

(*b*) Parl. Deb. (1864) 175, c. 77.

(*c*) Parl. Deb. (1863) 169, c. 1267 ; *ibid.* (1834) 21, c. 1377 ; *ibid.* (1864) 173, c. 1282.

When a revised estimate for a *reduced* amount has been presented, it is not in order to move to increase such amount up to the amount of the original estimate, as that estimate is taken to be superseded by the presentation of a revised estimate. Doubt was raised on this point in 1858, in respect of revised reduced estimates for the navy and army, and the order referring the original army estimates to the committee was discharged, C. J. (1858) 112, 120; but no such precaution was taken as regards the navy estimates.

**No alteration of destination.**—The Committee of Supply cannot attach a condition or an expression of opinion to a grant or alter its destination (*d*).

The rule came under consideration when a grant for the packet service was proposed, accompanied by a proviso prescribing that no part of the grant was applicable to certain payments for the conveyance of mails subsequent to 20 June 1863. An objection was taken to the proviso as an infraction of this rule; but as the proviso was strictly relevant to the grant for the packet service, and merely defined the purposes for which the grant was designed, the objection was not sustained by the chairman, and the regularity of the proviso was subsequently confirmed by the action of the House (*e*). On a subsequent occasion this precedent was followed; and an amendment to the words defining the destination of a grant was permitted, as the intention of the amendment was to define the purpose for which the vote was designed, and to render the resolution consistent both with the object to which the grant was destined, and with the description thereof in the estimate (*f*).

**Form of question in reductions of a grant.**—The method which, in the general practice of the House, regulates the putting of the question on an amendment to substitute other words for the original words of a motion (see p. 393) is disregarded in the Committee of Supply. When an amendment is proposed for the reduction of a grant, the motion originally proposed is wholly set aside, and can be withheld indefinitely from the decision of the committee; for the amendment, as proposed from the chair, takes the same form as the original motion, but offers, in lieu of the sum thereby demanded, a reduced sum for acceptance by the committee. The amendment thus takes the place of the original motion; and consequently, the rejection of the amendment does not, as would happen under the habitual usage of the House, bring the original motion under the decision of the committee, but leaves room for the proposal, without limit, of amendments in the same form, and of ever varying amount.

As the form in which notice is given of a reduction is "to move to reduce the vote by £(100)" the chairman in proposing the question on it has to rephrase it so as to translate it into the form of the original motion. The manner in which this is usually done is as follows:—The chairman says "The original question was 'That a sum, not exceeding £*x* be granted to His Majesty, etc.' Since which an amendment has been moved to reduce the sum by £(100). The question I have to propose is 'That a *reduced* sum not exceeding (£*x*—100) be granted to His Majesty for the said service.'"

(*d*) Parl. Deb. (1843) 71, c. 294; see also C. J. (1867) 266, 270 (where a proviso was added to a resolution in committee but deleted by the House), and *ibid.* (1875) 324.

(*e*) C. J. (1863) 231, 239; Parl. Deb. (1863) 170, c. 1882, 2024.

(*f*) C. J. (1886) 180, Parl. Deb. (1886) 305, c. 166.

**Omission or reduction of items of a grant.**—The form of amendment hitherto considered is to obtain a reduction of the total grant proposed from the chair. But a motion for a grant can also be dealt with in detail by proposals to omit or to reduce the items of expenditure which compose the grant, in the manner prescribed by the following rules, which were, on 9 February 1858, and 28 April 1868, adopted by the House :

“ That when a motion is made, in Committee of Supply, to omit or reduce any item of a vote, a question shall be proposed from the chair for omitting or reducing such item accordingly ; and members shall speak to such question only, until it has been disposed of.”

“ That when several motions are offered, they shall be taken in the order in which the items to which they relate appear in the printed estimates.”

“ That after a question has been proposed from the chair for omitting or reducing any item, no motion shall be made, or debate allowed, upon any preceding item.”

“ That when it has been proposed to omit or reduce items in a vote, the question shall be afterwards put upon the original vote, or upon the reduced vote, as the case may be.”

“ That after a question has been proposed from the chair for a reduction of the whole vote, no motion shall be made for omitting or reducing any item ” (g).

Under these rules, the question upon the whole grant is first proposed from the chair ; and if a motion be made to omit or reduce any item comprised in that grant, a question is put in a direct form “ That item (A) be omitted ” (h), or “ be reduced by £(100) (i) ; and when a reduction has been made in the amount of an item, a further motion may be made to omit the reduced item (k). In dealing with the items of an estimate, it has been ruled that items must be dealt with separately (l), and that an amendment including more than one item cannot be proposed by way of reduction of an item, but must be moved as a reduction of the whole grant (m). The rule which prohibits any return in debate to an item prior to the item upon which the debate has arisen, or a question has been proposed, remains in force, after the withdrawal of the motion on which that question was founded (n) ; nor can a proposal be made for the reduction of the whole grant, for the purpose of renewing discussion upon an item on which a question has been proposed, or debate arisen, or upon any item previous thereto (o). The reduction of a grant or item must be of a substantial, and not of a trifling amount (p) ; nor may a series of motions be made upon the same grant, raising, substantially, the same issue (q).

**Greater and lesser sums.**—When two or more amendments upon the same grant are, at the same time, tendered to the committee, the chairman

(g) C. J. (1858) 113 ; *ibid.* (1868) 145.

(h) C. J. (1864) 211 ; *ibid.* (1877) 138 ; *ibid.* (1882) 83 ; *ibid.* (1889) 431 ; *ibid.* (1920) 41, 43 ; *ibid.* (1921) 173.

(i) C. J. (1879) 97, 396 ; *ibid.* (1884) 404 ; *ibid.* (1889) 431, 435

(k) C. J. (1864) 211.

(l) Parl. Deb. (1865) 177, c. 1990.

(m) But see Parl. Deb. (1888) 330, c. 497.

(n) Parl. Deb. (1895) 36, c. 1078 ; H. C. Deb. (1914) 58, c. 1838 ; *ibid.* (1920) 136, c. 329.

(o) Parl. Deb. (1884) 287, c. 325 ; *ibid.* (1887) 319, c. 1484–85.

(p) The chairman has refused to put the question on a reduction of £5, Parl. Deb. (1878–79) 246, c. 1439. See also H. C. Deb. (1916) 80, c. 1297.

(q) Parl. Deb. (1877) 236, c. 592.

(in the spirit of the ancient practice) puts first the amendment which proposes the largest reduction, and then, if that be not accepted, the lesser amendments (*r*); still, as reductions are moved upon a grant independently the one of the other, a succession of reductions may be moved alternating between larger and smaller amounts, as may seem expedient to the movers, subject to the authority of the chairman, who may intervene to determine the most convenient order in taking the amendments offered (*s*).

The elaborate particularity of these rules suggests a practice of scrutinizing the estimates from a more strictly financial point of view, or at any rate a greater tendency to control the details of administration, than is the habit of the modern Committee of Supply, whose inclination is far more towards the wide scope of debate permitted by the consideration of several votes at the same time (see p. 701), than to concentration upon a single vote, item by item. The rarity with which these rules have now to be applied is one more indication of the change in the conception of the functions of the Committee of Supply.

#### RELEVANCY IN DEBATE

In accordance with general usage, the main principle which governs debate in the Committee of Supply is relevancy to the matter which the question proposed from the chair submits to the committee.

**On defence services estimates.**—To this rule a necessary exception is made. The expenditure on each of the defence services, though spread over various sources of outlay, is expenditure devoted to one object. By established usage, therefore, if the Minister in charge of the navy, army, or air estimates has not made his general statement concerning the service for the year upon the question "That Mr. Speaker do now leave the chair" for the committee, he makes it upon the first vote that is proposed to the committee, namely, the vote which determines the number of officers and men to be maintained, or the vote for pay (*t*), and a general discussion on the service is taken thereon.

Suggestions are sometimes made as to the desirability of a debate upon the whole question of defence involving all three services, but under the rules of supply no suitable opportunity has yet been found for it, though some aspects of defence common to all three services are debatable upon the vote for the Committee of Imperial Defence and, recently, upon that of the Minister for the Co-ordination of Defence. It does not seem to be an unreasonable extension of the facility for general debate described above. In the absence of such facilities, a debate might take place on a government motion for the adjournment of the House (*u*), and has taken place on a motion approving of a specially presented White Paper on Defence (*a*), and on a motion of censure moved by the Opposition (*b*). (and see p. 701).

This power of general debate does not, however, sanction discussion in detail upon special subjects, which must be reserved until the grant for

(*r*) Parl. Deb. (1857) 145, c. 1733; *ibid.* (1878-79) 248, c. 911. For a similar ruling on report, see H. C. Deb. (1909) 2, c. 1649.

(*s*) C. J. (1847-48) 405, 924; *ibid.* (1856) 101, 106, 124; *ibid.* (1868-69) 283.

(*t*) H. C. Deb. (1913) 53, c. 1058.

(*u*) H. C. Deb. (1934-35) 298, c. 1584.

(*a*) C. J. (1935-36) 107, 119, 120; *ibid.* (1937-38) 128, 137.

(*b*) C. J. (1934-35) 117.



that special service is before the committee, such as the reorganization of the controlling authorities over navy expenditure, or the tactics adopted during naval manœuvres or an admiralty minute dealing with a court martial (c). After the general discussion has taken place, debate must be confined to the particular vote before the committee (d). When in consideration of the pressing needs of the services, the number of men, and the grants for pay of the navy, army, or air services have been voted without full discussion, general debate has been permitted, in respect of the navy, upon the grant for victuals and clothing, in respect of the army, on the grants for provisions or clothing, and in respect of the air force, on the vote for the Air Ministry (e). In such cases also general debate has been permitted on report of vote A or vote 1 (see p. 704, n. (p)). The sanction of the Chair for any such departure from the ordinary rules of debate must be obtained while the vote, upon which the general discussion is in order, is under consideration (f).

**On civil estimates.**—No method has been established for obtaining in the committee a general discussion upon the administration of the expenditure sanctioned by the civil estimates ; and debate must be kept to the specific object of the grant which is placed before the committee.

For instance, the grant for the salary for the Chief Secretary for Ireland was held not to justify a review of his conduct regarding prosecutions—a subject relevant to the grant for public prosecutions, *Parl. Deb.* (1888) 331, c. 859 ; *ibid.* (1889) 339, c. 1827. Criticism made on the grant for prisons upon the enforcement by the officials of the prison rules, was permitted, but not on the conditions imposed by those rules from a legislative point of view ; nor can the circumstances attending the trial, which resulted in sending a prisoner to gaol, be discussed on the prisons vote, *Parl. Deb.* (1891) 356, c. 447, 475.

In general a service for which there is a special vote should not be discussed on the vote of the department which includes the salary of the Minister responsible for it. Thus the discussion of the following services has been prohibited on the votes of the following departments : the establishment of training centres on the Ministry of Labour vote, *H. C. Deb.* (1927) 204, c. 1726–28 ; the Carlisle state management scheme on the Home Office vote, *ibid.* (1931) 255, c. 2128 ; export credits on the Foreign Office vote, *ibid.* (1931) 252, c. 1627 ; the work of the Central Electricity Board on the Ministry of Transport vote, *ibid.* (1932) 265, c. 1449.

Conversely, on the vote for a special service matters of policy extending beyond the special service cannot be discussed. On the following votes the following matters were ruled out of order : on a (supplementary) vote for the Stationery Office, the policy of the Chancellor of the Exchequer in publishing certain reports, *H. C. Deb.* (1912) 34, c. 1068 ; on a (supplementary) vote for Royal Commissions, the policy of appointing a particular commission, *ibid.* (1926) 192, c. 1056 ; on the vote for the salaries of officials administering a certain Act, an attempt to assess the merits of the Act, *ibid.*

(c) *Parl. Deb.* (1886) 303, c. 1215 ; *ibid.* (1889) 333, c. 1731 ; *ibid.* (1893–94) 9, c. 1278.

(d) *Parl. Deb.* (1875) 223, c. 655 ; *ibid.* (1898) 63, c. 355, 370.

(e) *Parl. Deb.* (1882) 267, c. 851 ; *ibid.* (1890) 350, c. 2039 ; *H. C. Deb.* (1921) 138, c. 1715 ; *ibid.* 140, c. 2111. See also *ibid.* (1913) 53, c. 1058 ; *ibid.* (1919) 122, c. 1367 ; *ibid.* 123, c. 87.

(f) *Parl. Deb.* (1899) 74, c. 1603 ; *ibid.* (1901) 91, c. 1026 ; *ibid.* (1905) 142, c. 1322 ; *ibid.* (1906) 154, c. 102.

(1912) 41, c. 1722; on a (supplementary) vote for the Civil Service Commission, the question of appointing persons without examination, *ibid.* (1932) 261, c. 1063-73.

On the vote for the salaries of the law officers of the Crown the advice given by them to the Cabinet cannot be raised in debate, H. C. Deb. (1915) 73, c. 1085. It has been ruled that matters for which the Prime Minister is responsible cannot be discussed on the vote for the salary of the First Lord of the Treasury, H. C. Deb. (1914) 64, c. 218; but now that, under the Ministers of the Crown Act, 1937, a salary is paid to the Prime Minister and First Lord of the Treasury, as such, the scope of debate on the vote in respect of this salary must be reviewed. A proposal has been made by the Estimates Committee that the discussion on the vote for a department should be allowed to extend to the services rendered to it by other departments so as to cover all the expenditure and cost of the department, H. C. 59, p.v. (1926). But this suggestion was not supported by the Government, H. C. Deb. (1926) 198, c. 613-16.

Although there is no method of obtaining in Committee of Supply a general review of the civil estimates as a whole, yet the field of debate is often extended to cover all the votes of a particular department (*g*) and even the connected activities of two departments (*h*). The procedure is to propose the question on one of the votes, on which general discussion takes place, and, if it is desired to record dissent against the other votes, to divide without further discussion. If it is desired to propose a reduction on the first vote it is customary to defer doing so until after the general discussion is concluded, as, once a reduction is moved, debate is confined to the vote or item to which it applies (*i*). Any such relaxation of the rules, it need hardly be said, can only take place by general consent of the committee which is, however, seldom refused. General consent is taken to be withheld if a single Member expresses dissent (*k*).

With the increasing complexity of departmental administration and the desire of Members to discuss a matter which might come within the scope of two or more votes, the rapid growth of a procedure which was, strictly speaking, a departure from the rules of debate in supply caused misgivings to the Chair (*l*) and at times created difficulties for the committee (*m*).

In 1942 a new form of procedure was devised which enabled discussion to take place on any number of votes relating to a particular subject. This method was to name the subject in the terms of the motion on the Order Paper, together with a total token sum made up of token sums from each vote. The votes, with token sums, are set out as a schedule to the motion on the Order Paper (*n*).

**On supplementary and excess grants.**—Debate on supplementary and excess grants is restricted to the particulars contained in the estimates on which those grants are sought, and to the application of the items which compose those grants; and the debate cannot touch the

(*g*) H. C. Deb. (1929) 227, c. 433; *ibid.* (1935) 304, c. 887.

(*h*) H. C. Deb. (1922) 155, c. 1693, 1706.

(*i*) H. C. Deb. (1937-8) 337, c. 79.

(*k*) H. C. Deb. (1923) 163, c. 723.

(*l*) H. C. Deb. (1940-41) 373, c. 1273.

(*m*) H. C. Deb. (1935-36) 314, c. 1418.

(*n*) See Notices of Motions, 7 May 1942; H. C. Deb. (1941-42) 379, c. 1450-51.

policy or the expenditure sanctioned, on other heads, by the estimate on which the original grant was obtained, except so far as such policy or expenditure is brought before the committee by the items contained in the supplementary or excess estimates (o).

This practice has been consistently upheld in Committee of Supply by the chairman, and in answer to a question put to him by the Chancellor of the Exchequer on 3 March 1893, the Speaker ruled as follows. . . . “Undoubtedly, of late years a certain limitation has been enforced upon the discussion of supplementary estimates. As a general rule, on the supplementary estimates it is in order to discuss only the particular items which constitute the supplementary estimates, and the sub-heads of the original estimates can only be referred to so far as they are involved in the fair discussion of the points contained in the items asked for in the supplementary estimates. Of course, it is quite obvious that it should be improper, as a general rule, to raise on a supplementary estimate the whole question of policy involved in the original estimate; and, as I have stated, the discussion is properly confined to the items of the supplementary estimate. I think, however, that I ought to state that items of supplementary estimates may raise in themselves questions of policy, but the interpretation whether they do raise questions of policy or not, must clearly be left to the chairman of committees. If I may be allowed to illustrate what I mean, I would say a vote for the drainage of the Embassy at Constantinople would clearly not raise the whole question of foreign embassies. But, on the other hand, a vote which would largely increase the vote for a railway to Uganda might raise the whole question of the policy involved in the original vote for Uganda.” *Parl. Deb.* (1893) 9, c. 975.

If the sum demanded by a supplementary estimate is of the same order of magnitude as the original estimate the chairman has allowed questions of policy to be raised upon it which would have been in order if it had been an original estimate (p); but if the supplementary estimate is merely to provide additional funds of a relatively moderate amount required in the normal course of working of the services for which the original vote was demanded, only the reasons for the increase can be discussed and not the policy implied in the service which must be taken to have been settled by the original vote (q); nor can savings be discussed (r).

A supplementary estimate for a new service (see p. 679) raises the whole question of the policy implied in the service in the same way as an original estimate. It may be mentioned here that the Speaker and Chairman have disclaimed any right to take objection to such an estimate on the ground that it is presented without, or in anticipation of, legislative authority (s) (see p. 712).

**Debate on a vote on account.**—Matters which can be discussed upon the grant on which an advance is sought, may be discussed, in anticipation, upon the motion for the grant on account; though the

(o) *Parl. Deb.* (1886) 302, c. 594; *ibid.* (1887) 311, c. 1418, 1424; Report of Select Committee on Estimates (Procedure), *H. C.* 281 (1888), questions 2, 164, 446, 705; *H. C. Deb.* (1925) 180, c. 612; *ibid.* (1927) 202, c. 949; *ibid.* (1929) 226, c. 1157; *ibid.* (1930) 234, c. 796, etc.

(p) *H. C. Deb.* (1938-9) 344, c. 708.

(q) *H. C. Deb.* (1914) 58, c. 2015-20.

(r) *H. C. Deb.* (1939-40) 357, c. 294.

(s) *H. C. Deb.* (1930) 246, c. 1209.

proper occasion to examine the grants in detail is when the final grant to complete the sum demanded is proposed to the committee.

If, as occasionally takes place, the whole amount required for a particular service (as, by way of example, for a special diplomatic mission which has been brought to a conclusion), has been obtained on a grant on account, the committee is not thereby debarred from debate on the subject of that mission, when the final grant for missions abroad is being considered, although, as no money is included for that mission in the grant then before the committee, no reduction thereon can be proposed (f).

### General restrictions on debate in Committee of Supply.

Regarding the general conduct of debate in the Committee of Supply, it may be observed that remarks on the conduct of a servant of the state, made on the grant containing his salary, must be restricted to his official conduct (u). The Committee of Supply does not afford the proper opportunity for discussing from which House of Parliament a Minister should be chosen (a), or whether he should be in the Cabinet or not (b), or which Minister should represent the Government in respect of the estimates under consideration (c). The administrative action of a department is open to debate, but the necessity for legislation and matters involving legislation cannot be discussed in Committee of Supply (d). Nor can the actions of those high public servants whose conduct can only be criticized upon substantive motions (e) (see p. 375) nor the decision of a judicial court (f), nor action for which a Minister is not responsible, such as the offer of a contribution to the navy by a colony (g). A Member cannot discuss a grant on which the committee have resolved, or a grant not yet brought forward. So also, when a proposal has been made to omit or reduce an item, debate is restricted to that item, and reference is not permitted to any other item in the grant (h). Reply in committee to statements made in the House upon the estimates is not permitted (i).

*Public Accounts Committee and Estimates Committee.*—By a recent amendment of S.O. No. 14, it is possible to consider reports from the Committee of Public Accounts or from the Estimates Committee on a day allotted to the business of supply (see above, p. 687).

## 3. CONSIDERATION OF REPORTS FROM THE COMMITTEE OF SUPPLY

### INTERVAL BETWEEN REPORT AND CONSIDERATION OF REPORT

In deference to the usage mentioned on p. 659, the resolutions of the Committee of Supply are not considered on the day on which they are

(f) Chairman's private ruling, Sir H. Drummond Wolff's mission, 1887.

(u) Parl. Deb. (1888) 329, c. 1431-34; *ibid.* (1890) 341, c. 1213. Since 1920, when the salary of the Secretary of State for India was put on the Civil Estimates, the discussion of Indian affairs has taken place on that vote.

(a) Parl. Deb. (1895) 36, c. 925, 1304; *ibid.* (1896) 39, c. 657; *ibid.* (1906) 156, c. 50.

(b) Parl. Deb. (1896) 43, c. 44.

(c) H. C. Deb. (1911) 21, c. 1449.

(d) Parl. Deb. (1894) 28, c. 1523; H. C. Deb. (1923) 164, c. 1507, 1562 and on numerous other occasions.

(e) H. C. Deb. (1913) 56, c. 809.

(f) H. C. Deb. (1909) 8, c. 1916. This ruling was given on a stage of the Appropriation Bill, but the same principle applies to Committee of Supply.

(g) H. C. Deb. (1913) 50, c. 1933.

(h) Parl. Deb. (1864) 175, c. 1673; *ibid.* (1865) 177, c. 1990.

(i) Parl. Deb. (1860) 157, c. 1851; *ibid.* (1900) 80, c. 782-83; H. C. Deb. (1928) 214, c. 1661.

reported from the committee, but on a future day appointed by the House.

A relaxation of this rule is permitted in cases of extraordinary urgency, but not to facilitate the ordinary transaction of public business. During the mutiny of the fleet in 1797, the report from the Committee of Supply of a grant for an increase of pay to the seamen and marines was, on 8 May, by order of the House, at once received and agreed to ; and on the 24th, an increase of pay was voted to the land forces in the same manner (*k*). The House has also ordered under special circumstances, upon a motion of which notice had been given, that resolutions might be considered as soon as they had been reported from the Committee of Supply (*l*).

#### PROCEDURE IN CONSIDERING REPORT OF RESOLUTIONS

Resolutions reported from the Committee of Supply are considered according to the practice observed regarding other reports from Committees of the whole House (see p. 575). No question is proposed for the second reading of a resolution, but each is read from the table in its order as reported, and this is taken to constitute its second reading. The interval between the reading of the resolution and the proposal of the question, "That this House doth agree with the committee in the said resolution," affords the occasion for the proposal of a reduction of the sum specified in the resolution (*m*), as no amendment can be moved after the proposal of the question, that the House agrees with the committee in a resolution.

Two somewhat ancient instances may be cited of amendments whereby it was sought to attach a condition to a grant upon the report of the resolution authorizing it (*n*); but the rule forbidding such an amendment, long in force in committee, is equally applicable upon the report stage of a grant. The method of providing money for the supply granted by a resolution, whether by a fresh Consolidated Fund Bill or by the diversion under section 2 (1) of the Public Accounts and Charges Act, 1891, of money provided by a previous Act (see p. 640), cannot be discussed on the report of the resolution (*o*). According to existing practice, procedure upon a report of the grants made by the Committee of Supply consists of debate strictly relevant to each resolution (*p*), as it is separately submitted to the House, raised either on an amendment proposing a reduction thereof (*q*), no other form of amendment being in

(*k*) C. J. (1797) 552, 605, 33 Parl. Hist. 477.

(*l*) C. J. (1910) 305 ; *ibid.* (1938-9) 406.

(*m*) Parl. Deb. (1905) 150, c. 287, etc.

(*n*) C. J. (1796) 220 ; *ibid.* (1823) 443.

(*o*) Parl. Deb. (1904) 137, c. 214-15.

(*p*) Parl. Deb. (1865) 178, c. 360 ; H. C. Deb. (1909) 2, c. 364, 1649 ; *ibid.* (1935-6) 310, c. 647, etc., etc. See also remarks of Chair in permitting a general debate on report of vote A of navy estimates, *ibid.* (1913) 51, c. 58, on vote A of air estimates ; *ibid.* (1925) 181, c. 1567 ; *ibid.* (1926) 192, c. 873, and on vote A of army estimates, *ibid.* (1928) 215, c. 239 ; and also in allowing a general discussion on various Scottish estimates on the resolution containing the salary of the Secretary for Scotland, *ibid.* (1925) 187, c. 1192, 1195. In the case of the estimates of a defence service it has become the practice to allow a general debate on report of vote A if there has not been an opportunity for such general debate in committee, *ibid.* (1937-8) 332, c. 2122-3, etc. In order to secure a comprehensive discussion of civil defence, six votes have by the general consent of the House been debated together, *ibid.* (1938-9) 350, c. 2229.

(*q*) An amendment has been proposed to a proposed reduction, C. J. (1820-21) 487.

order, or on the final question that the House agrees with the resolution, though to that question no amendment can be moved. The discussion of matters involving legislation is not permitted (r).

**Postponement or recommittal.**—Before the final question is put upon each resolution, the postponement of the consideration thereof may be proposed (s), or a motion may be made for its recommittal (t), but the latter motion cannot be moved by an unofficial Member, as the only object of recommitting a resolution (except for the purpose of correcting an error) is to increase its amount, which cannot be done except on the motion of a Minister (u). When the amount of a supply grant has been reduced in committee, and an alteration of that sum is sought, either by a complete or partial restoration of the original sum, the resolution is recommitted, as in committee alone an addition to the public burdens can be made (a). If a recommitted grant has been increased on reconsideration by the committee, the resolution specifies that, in addition to the sum already granted, a further sum has been granted for the purpose therein stated (b).

**Amendments to resolutions on report.**—In accordance with the principle that amendments imposing a charge can be proposed only in committee, an amendment to restore a sum reduced in committee is out of order. If a reduction of the amount in a resolution is moved, the question that the Speaker puts from the chair (following the normal practice in respect of amendments and not that peculiar to Committee of Supply) is that the original sum "stand part of the said resolution" (c). If that question passes in the negative, the question follows that the reduced amount "be there inserted," and upon that question a further amendment may be proposed.

Thus, by way of example, when a resolution was read for a grant of £34,026 (Houses of Parliament), an amendment was proposed to leave out £34,026 and insert instead £28,526. The original sum, £34,026, was negatived; the insertion of £28,526 was moved, when a proposal was made to substitute for £28,526 the sum of £31,026. The House negatived the consequent question, namely, that "£28,526 stand part of the proposed amendment," and then agreed to the insertion of the sum of £31,026 (d).

**Rescinding of resolutions.**—It may be necessary to rescind a resolution of the House agreeing with a resolution reported from the Committee of Supply as a consequence of the substitution of a revised for an original estimate.

In 1856 a grant made on account was found to be in excess of the total amount required for the year. The due amount was accordingly voted *de*

(r) H. C. Deb. (1940-1) 373, c. 1680, etc.

(s) C. J. (1864) 324; *ibid.* (1887) 322, 386; *ibid.* (1894) 397; *ibid.* (1904) 406.

(t) C. J. (1822) 314; *ibid.* (1886) 88, 92, 104, 108, etc.

(u) H. C. Deb. (1909) 5, c. 750. A similar motion made by an unofficial Member, *ibid.* (1903) 123, c. 64, has by subsequent direction of the Speaker, been omitted from the Journal.

(a) C. J. (1767) 76; 3 Hatsell 179.

(b) C. J. (1858) 320; *ibid.* (1880) 375; *ibid.* (1886) 108.

(c) 3 Hatsell 184 n.; C. J. (1871) 107; *ibid.* (1889) 214, 445, etc., etc.

(d) C. J. (1868-69) 312.

*novo* in committee ; and the previous resolution was rescinded before the new resolution was agreed to by the House (*e*).

#### 4. THE ARMY AND AIR FORCE (ANNUAL) BILL

The consent of Parliament, necessary to legalize "the raising and keeping" of a standing army within the United Kingdom, in time of peace, is so intimately connected with the grant of supplies for the service of the Crown (*f*), that the bill which gives that consent, and provides for the regulation and discipline of the army (*g*), forms one of those measures which of necessity must be introduced in the House of Commons. The Army and Air Force (Annual) Bill is ordered in when the House has agreed to the resolutions voted by the Committee of Supply, which determine the number of men who shall be maintained during the year for the army, for the air force, and for the sea services.

The Army and Air Force (Annual) Act makes provision for one year (in respect of the home forces from 1 May to 30 April) for the discipline of the army, of the air force, and of the marines when ashore. The discipline of the navy and of the marines, when afloat, is secured by permanent statutes.

Until 1879 the whole code of military law was temporary, being re-enacted each session by a Mutiny Bill. In that year a more convenient arrangement was arrived at. Provision for the discipline and regulation of the army was embodied in a permanent Act, but, in order to secure the right of Parliament to give or to withhold its consent to a standing army, it is also provided that the permanent Act is inoperative unless brought into force by an annual Act. The annual Act provides for any amendment of the permanent Act, rendered necessary by changing circumstances.

By this limitation, the Commons, in addition to their control over the number of the naval, military, and air forces, and the yearly sums to be appropriated to their support, reserve to themselves the power of determining whether a standing army shall be kept in being.

The permanent Act regulating the discipline of the army, cited as the "Army Act," is based upon the Army Discipline and Regulation Act, 1879, consolidated with the subsequent Acts amending the same in the Army Act, 1881, and subsequently amended by annual Acts. The similar Act for the air force, cited as the "Air Force Act," is based upon the Army Act, adapted to the circumstances of the air force by the modifications set out in the second schedule of the Air Force (Constitution) Act, 1917. It continues in force only as long as the Army Act (*h*), and, like that Act, may be amended by the Army and Air Force (Annual) Act.

#### DEBATE ON ARMY AND AIR FORCE (ANNUAL) BILLS

On the second or third reading of an Army and Air Force (Annual) Bill, debate on the general purposes of the army and air force is not permissible. The policy by which the army is administered (*i*), the

(*e*) C. J. (1856) 268.

(*f*) 24 Parl. Hist. 720.

(*g*) As to provisions coming within the scope of these words, see H. C. Deb. (1909) 3 c. 926.

(*h*) Air Force (Constitution) Act, 1917, s. 12 (3).

(*i*) H. C. Deb. (1914) 61, c. 891 ; *ibid.* (1917-18) 92, c. 164, *ibid.* (1920) 127, c. 1480, 1982 ; *ibid.* (1923) 162, c. 1021. For a similar ruling in committee, see *ibid.* (1913) 51, c. 2027.

enforcement of the existing army regulations (*k*) and the conduct of troops in war (*l*), have been ruled out of order, and it has been held that the details of the conduct of proceedings before military courts of inquiry and the prices paid for the billeting of troops must be discussed in committee on the bill and not on its second reading (*m*).

Amendments proposing to make the Army Act permanent (*n*), to render unlawful the employment of troops in dealing with trade disputes (*o*), and dealing with the attendance of troops at church parade (*p*) have been ruled out of order.

Under S.O. No. 1 (6) proceedings on the Army and Air Force (Annual) Bill are exempted business.

## 5. THE COMMITTEE OF WAYS AND MEANS (SPENDING)

### ISSUE OF MONEY FROM THE CONSOLIDATED FUND TO MAKE GOOD SUPPLY GRANTS

In the Committee of Ways and Means, in the second of its functions, referred to on p. 657—that which is complementary to the function of the Committee of Supply—resolutions are agreed to which authorize the issue from the Consolidated Fund (see p. 640) of sums of money to make good the grants voted by the Committee of Supply for the public service. These resolutions take the form, "That, towards making good the supply granted to his Majesty for the service of the year ending on 31 day of March 19—, the sum of £ *x* be granted out of the Consolidated Fund of the United Kingdom;" and upon these resolutions, when agreed to by the House, are founded, first, the sessional Consolidated Fund Bills, and finally the Appropriation Bill which endows those resolutions with complete legal effect.

### CORRESPONDENCE IN AMOUNT OF GRANTS OF SUPPLY AND WAYS AND MEANS

The drafts upon the Consolidated Fund authorized by the resolutions of the Committee of Ways and Means must not exceed the amount of supply which has previously been granted for the service of the year, exclusive of any supply which has already been covered by ways and means resolutions and embodied in a Consolidated Fund Bill, and it is the duty of the Public Bill Office, acting on behalf of the Speaker (*q*), to ensure compliance with this rule. In deference to this requirement the ways and means resolutions, on the report of which Consolidated Fund and Appropriation Bills are founded (see p. 709), are placed upon the notice paper after the corresponding stages of the supply grants which those resolutions are designed to meet.

(*k*) Parl. Deb. (1889) 334, c. 807; *ibid.* (1897) 47, c. 1005.

(*l*) Parl. Deb. (1901) 92, c. 1347.

(*m*) Parl. Deb. (1903) 120, c. 854; *ibid.* (1905) 144, c. 254. As to the amendment of the rates for billeting in the schedule, see Parl. Deb. (1907) 171, c. 1195; C. J. (1919), 94; H. C. Deb. (1919), 114, c. 1301; C. J. (1920) 101.

(*n*) H. C. Deb. (1911) 24, c. 884.

(*o*) H. C. Deb. (1914) 61, c. 1069; *ibid.* (1924-25) 182, c. 1397; *ibid.* (1927) 204, c. 1136.

(*p*) H. C. Deb. (1924-25) 182, c. 1421.

(*q*) Report on Public Moneys, H. C. 279, p. 27 (1857) sess. II.; Todd II. 230.



These resolutions are drawn in the form of lump sums for separate years where (as in the main Consolidated Fund Bill) supply attributable to more than one financial year is authorized, and show no separate allocation of ways and means for particular supply grants. If necessary, on report, the amount sanctioned by the ways and means resolution is brought by reduction into conformity with the grants made by the Committee of Supply (r).

#### PROCEDURE IN COMMITTEE OF WAYS AND MEANS

The proceedings in the Committee of Ways and Means, when it is performing the function of authorizing the issue of sums to meet the total of the grants previously voted by the Committee of Supply, have become purely formal and give rise to no debate. The proceedings do not afford a second opportunity for the discussion of expenditure which is properly the function of the Committee of Supply, but are regarded as consequent upon the proceedings in that committee. As the amounts of ways and means resolutions follow automatically from the amounts of supply resolutions already voted, and as any alteration would involve inconsistency with previous decisions, no amendment of a ways and means resolution is in order except for the purpose of correcting an error.

**Reports of the Committee of Ways and Means.**—Resolutions reported from the Committee of Ways and Means are considered according to the same rules as those which govern the consideration of reports of the Committee of Supply (see p. 703). As stated above, if a supply resolution were reduced on report a corresponding reduction would be necessary on report of the ways and means resolution, and the amendment would be proposed in the ordinary form by leaving out the original sum and substituting a reduced sum. Under S.O. No. 70 a resolution authorizing the issue of money out of the Consolidated Fund may be considered by the House directly after it has been reported by the Committee of Ways and Means.

When the House on report has agreed to the resolutions of the Committee of Ways and Means the annual Consolidated Fund and Appropriation Bills are brought in.

#### CLOSE OF THE FINANCIAL PROCEEDINGS OF THE SESSION

When all the supply for the service of the year has been granted and the corresponding resolutions of ways and means voted, the chairman in making his report to the House omits to ask leave to sit again. The sittings of the Committees of Supply and Ways and Means are thereby discontinued and supply is said to be "closed." Care must be taken not to close these committees until all the necessary financial business has been disposed of. If the Committee of Supply be designedly closed, it cannot be opened save by the demand from the Crown for further supplies made by a second speech from the throne (s), or a royal message (t), or

(r) C. J. (1911) 278.

(s) C. J. (1706) 326, 329; *ibid.* (1715) 232, 234.

(t) C. J. (1721) 592, 602; *ibid.* (1748) 611, 626, 635; *ibid.* (1910) 302; *ibid.* (1913) 517; *ibid.* (1924-25) 422; 3 Hatsell, 168.

by the communication of additional estimates (*u*). In recent sessions when the practice has been followed of adjourning both Houses until the autumn instead of proroguing Parliament, it has also been thought advisable to keep supply "open." In 1931 the Committee of Ways and Means was re-opened separately from the Committee of Supply (*a*).

### C. BILLS AUTHORIZING GRANTS OF SUPPLY

All grants of supply voted by the Committee of Supply in respect of whatever estimate—ordinary, supplementary or excess—after being covered by grants of ways and means, require to be authorized by legislation (see p. 650). The bills for this purpose are brought in, not directly upon resolutions of the Committee of Supply, but on those of the Committee of Ways and Means. It will be remembered that such bills are exempt from the operation of the "Eleven o'clock rule" and that the practice of the House which forbids the transaction of more than one stage of financial business on the same day is so far relaxed in their case as to allow the committee and subsequent stages to be taken on the same day (S.O. No. 70) (*b*).

#### CONSOLIDATED FUND BILLS

As stated on p. 651 provisional sanction of the issue of money immediately required for the public service is necessary every session before the final completion of financial arrangements enables the Appropriation Bill to be introduced. This provisional sanction is given by bills known as Consolidated Fund Bills which are passed for the purpose of authorizing the Treasury to issue money out of the Consolidated Fund in pursuance of the Exchequer and Audit Departments Act, 1866, and the Public Accounts and Charges Act, 1891.

There are generally several Consolidated Fund Bills (distinguished from each other by numbers) every session between the passing of the Appropriation Act (see below) and the end of the financial year. The most important of these bills is that passed towards the end of March which authorizes the issue out of the Consolidated Fund of sums to make good (1) supplementary grants for the closing financial year; (2) civil grants on account and certain grants for the defence services for the coming financial year. It may also authorize grants to make good excesses incurred in the previous financial year.

This, the main Consolidated Fund Bill, is preceded when occasion requires in any financial year by an earlier bill or bills for the purpose of providing money for services, not authorized by the previous Appropriation Act, expenditure on which cannot be deferred.

A Consolidated Fund Bill consists of a special enacting formula which expresses the predominant share of the House of Commons in finance (see p. 650), clauses authorizing the Treasury to issue money out of the

(*u*) C. J. (1902) 461, 463; Parl. Deb. (1902) 114, c. 108; C. J. (1914) 417, 418, 455, 456; *ibid.* (1915) 234, 235; *ibid.* (1920) 444, 445; *ibid.* (1924-25) 416, 422.

(*a*) C. J. (1930-31) 407, 420.

(*b*) C. J. (1919) 74, 301.

Consolidated Fund to make good supply already granted, and a clause authorizing the Treasury to borrow by treasury bills or ways and means advances (see p. 747). If the supply is in respect of different years, the supply for the coming financial year and the supply for the current (and previous) year are embodied in separate clauses.

#### THE APPROPRIATION ACT

The final Consolidated Fund Bill is the Consolidated Fund (Appropriation) Bill, which on enactment receives the title of the Appropriation Act. It supplements the main Consolidated Fund Bill of the previous March by authorizing the issue of the remaining sums for the service of the year. Its contents are similar to those of a Consolidated Fund Bill; and, in addition, it appropriates the money issued by it and by the preceding Consolidated Fund Bills of the session, vote by vote, to the services for which they were granted, in terms following those of Part I of each individual estimate; and authorizes the application, as appropriations-in-aid, of receipts to the amount specified. It also authorizes the temporary application during the current year of a surplus on any vote of a defence service to meet a deficiency in receipts or an excess of expenditure on any other vote of the same service, and confirms in detail such application of surpluses which has occurred in the year before the last preceding financial year.

**Appropriation to be completed each session.**—The principle of appropriation, the constitutional importance of which has been indicated in the previous chapter (pp. 650-2) requires that all money issued from the Consolidated Fund should be appropriated by statute to the services for which it has been voted, and that the session should not be closed before this has been done. If it is intended to dissolve Parliament before supply for the year has been provided, any grants on account that may be necessary must be appropriated by an Appropriation Act before the session is closed (see p. 677). If at any time during a session after the Appropriation Act has been passed further grants of money are voted, a second Appropriation Act becomes necessary (c).

The old prejudice of the Commons against proceeding with any business after the passing of the Appropriation Act is no longer felt. It seems to have been last advanced in 1882, but was then over-ruled by a large majority (d).

Debate on the second and third reading (each of which normally occupies a complete sitting) of the main Consolidated Fund Bill and the Appropriation Bill provides a regular opportunity for the criticism of administrative policy in respect of matters raised by the Opposition and, if time permits, by private Members (see p. 288). The resemblance of these occasions to supply days is increased by the fact that the opportunity provided by them may be taken by a Minister to make his annual review of the work of his department (e).

(c) C. J. (1902) 493; *ibid.* (1914) 293.

(d) C. J. (1882) 137, c. 489; H. C. Deb. (1882) 274, c. 3.

(e) Parl. Deb. (1886) 306, c. 1723; H. C. Deb. (1892) 5, c. 1355, etc.

**Debate on Consolidated Fund Bills.**—Debate and amendment on the stages of these bills must be relevant to each bill and must be confined to the conduct or action of those who receive or administer the grants specified in the bill in the case of an Appropriation Bill (*f*), or, in the case of those Consolidated Fund Bills which do not include appropriation, the grants of supply which form the basis of the ways and means resolutions upon which the bills are founded (*g*). In general terms, any questions of administrative policy may be raised which are implied in such grants of supply. Thus, whereas the field of debate on the main Consolidated Fund Bill of the year and upon the Appropriation Bill is normally commensurate with the whole range of administrative policy, debate upon a Consolidated Fund Bill introduced for the express purpose of providing funds for some newly undertaken service is limited to that service. Debate on these bills is thus limited to relevant questions of administration, and, as in Committee of Supply, questions of taxation (*h*) and legislation (*i*) cannot be discussed.

As an illustration of this rule, it may be mentioned that discussion has been permitted on the state of Europe, so far as it depended on the conduct of the executive government, including, for example, the use made of the naval forces, or the action of the diplomatic servants of the Crown (*j*); whilst on the other hand, observations and amendments relating to the constitution of Great Britain (*k*), to the House of Lords (*l*), to the course of action taken by that House with regard to various bills (*m*), the tenure of land in Ireland (*n*), the desirability of establishing a ministry of agriculture (*o*), payments charged on the Consolidated Fund (*p*), the expense of actions at law, and alleged miscarriages of justice (*q*), and the action of magistrates (*r*), were held to be irrelevant. Nor has the fact that officials of a department have been engaged in collecting information with regard to proposals of the Government for legislation in a future session been held to justify a claim to discuss such proposals (*s*). The method authorized by s. 2 (1) of the Public Accounts and Charges Act, 1891, of providing the funds required for a particular service (see p. 640) has been ruled out of order on the second reading of a Consolidated Fund Bill (*t*).

**Procedure in Committee.**—The principle of relevancy, which is also strictly applied to debate in the committee on these bills, involves certain technicalities which are peculiar to them. On the clauses dealing with the issue of money from the Consolidated Fund subjects involving

(*f*) For amendments on stages, see C. J. (1882) 482, 484.

(*g*) For amendments on stages, see C. J. (1884) 138; *ibid.* (1885) 221.

(*h*) H. C. Deb. (1917-18) 98, c. 211.

(*i*) Parl. Deb. (1901) 99, c. 1092; *ibid.* (1904) 140, c. 531; *ibid.* (1907) 180, c. 1720; H. C. Deb. (1912-13) 41, c. 2750, 2761-62; *ibid.* (1919) 123, c. 553, etc.

(*j*) Parl. Deb. (1863) 172, c. 1246; *ibid.* (1864) 176, c. 1859; *ibid.* (1876) 231, c. 1160; H. C. Deb. (1914-16) 75, c. 1764; *ibid.* (1935-36) 310, c. 1435, etc.

(*k*) Parl. Deb. (1876) 231, c. 1119.

(*l*) Parl. Deb. (1880) 256, c. 472.

(*m*) Parl. Deb. (1880) 256, c. 1232; *ibid.* (1894) 29, c. 409; *ibid.* (1895) 35, c. 296.

(*n*) Parl. Deb. (1865) 180, c. 836.

(*o*) Parl. Deb. (1887) 321, c. 536.

(*p*) Parl. Deb. (1887) 321, c. 217; *ibid.* (1904) 132, c. 696.

(*q*) Parl. Deb. (1904) 140, c. 527.

(*r*) Parl. Deb. (1908) 193, c. 1845; H. C. Deb. (1909) 8, c. 1916.

(*s*) Parl. Deb. (1903) 127, c. 869.

(*t*) Parl. Deb. (1905) 147, c. 1445.

expenditure cannot be discussed (*u*), and debate on the amount of the sum to be issued or an amendment to reduce it or to alter the date or time for which the issue is to be made is out of order (*a*); on those clauses, the object of which is to ensure the application of the grants made by Parliament to the objects defined by the resolutions of the Committee of Supply, debate and amendment must be restricted to the principle of appropriation; and, on the clause which gives the Treasury power to borrow, the desirability of raising a loan in preference to issuing treasury bills cannot be advocated (*b*). The conduct of the officials or of the departments who receive the supply grants cannot be challenged in the committee on the bill (*c*). Amendments cannot be moved to clauses or schedules to effect the omission or reduction of the amount of a grant (*d*), or of the appropriations in aid of it (*e*), or an alteration in the destination of a grant (*f*), or to appropriate to a particular service the sum issued by a Consolidated Fund Bill not being an Appropriation Bill (*g*). When additional supply has been granted to His Majesty since the introduction of the bill and the consequential resolution in Committee of Ways and Means has been agreed to by the House, an instruction is given to the committee on the bill to enable them to make provision therein pursuant to the resolution (*h*). The enacting words of the bill are not open to amendment (*i*). According to present practice the committee stage of such a bill is formal and normally passes without debate.

#### AUTHORIZATION OF EXPENDITURE BY THE APPROPRIATION ACT WITHOUT SPECIFIC LEGAL SANCTION

Expenditure by a department for purposes not covered by its existing legal powers normally requires to be specifically authorized by a financial resolution associated with a bill according to the procedure described in the next chapter. General legislative authority is, however, given to expenditure demanded by way of an estimate by the annual Appropriation Act. The question has repeatedly arisen in the past whether, in a particular case, the authority given by the Appropriation Act is an adequate substitute for authorization by a specific bill.

On the one hand, there is, so far as this question is concerned, no legal restraint on the discretion of the Crown in presenting an estimate, or on that of Parliament in authorizing the expenditure provided by such an estimate by the Appropriation Act. On the other hand, the Appropriation Act is a general measure, containing a great many items and is not adapted

(*u*) Parl. Deb. (1888) 332, c. 977, 978; *ibid.* (1889) 340, c. 609; *ibid.* (1905) 148, c. 881.

(*a*) Parl. Deb. (1907) 171, c. 776; H. C. Deb. (1913) 50, c. 1676 *et seq.*

(*b*) H. C. Deb. (1916) 82, c. 2415.

(*c*) Parl. Deb. (1889) 340, c. 609; *ibid.* (1905) 148, c. 881; H. C. Deb. (1914-16) 74, c. 585.

(*d*) Parl. Deb. (1884) 292, c. 588; *ibid.* (1888) 332, c. 977, 980-83; *ibid.* (1894) 29, c. 410, 415; H. C. Deb. (1917-18) 96, c. 1605.

(*e*) Parl. Deb. (1904) 140, c. 484.

(*f*) Parl. Deb. (1880) 256, c. 1240.

(*g*) H. C. Deb. (1909) 2, c. 306.

(*h*) C. J. (1914) 432; *ibid.* (1919) 290; *ibid.* (1925) 389.

(*i*) Parl. Deb. (1888) 332, c. 993, 1010; *ibid.* (1889) 339, c. 219; *ibid.* (1900) 80, c. 1364.

to defining the conditions, etc., of expenditure. Also this Act only gives authority for a single year, and is therefore not appropriate for expenditure which is meant to continue for a period or indefinitely. There have been cases, too, in which the Appropriation Act has been used, not merely as a substitute for specific legislation, but to over-ride the limits imposed by existing legislation.

The Public Accounts Committee have repeatedly drawn attention in their reports to cases of what they considered the misuse of the Appropriation Act in either of the above-mentioned ways, and the Treasury, in answer to such comments, have justified the practice on grounds of emergency rather than of principle (*k*).

In 1908 the Public Accounts Committee recommended that the fact that a proposed vote over-rides an existing statute should be clearly stated on the face of the estimate with the reasons for adopting that course, and that the exceptional nature of the vote should be indicated in the Appropriation Act (*l*).

*Expenditure in anticipation of statutory authority.*—A case, analogous to those mentioned above is where an estimate is presented and money spent on a service in anticipation of the passing of a bill of the same session authorizing that service.

In their second report of session 1931-32 (para. 5) the Public Accounts Committee commented adversely on two classes of cases in which this practice had occurred. The Treasury justified the inclusion of such items of expenditure in the estimates as necessary for the information of the House, but agreed :—

(1) that a note should be added to the estimates indicating that they were subject to further statutory authority ; and

(2) that the authorizing bill must become law before the authorization of the relevant estimate by the Appropriation Act.

#### ROYAL ASSENT TO BILLS OF AIDS AND SUPPLY

A Consolidated Fund, Appropriation, or Finance Bill, or other bill for granting aids or supplies to the Crown, that has passed both Houses is returned into the custody of the Commons ; and when that House is summoned to the House of Lords, to attend the Sovereign or the Lords Commissioners, the bill is handed by the Speaker, at the bar of the House of Lords, to the Clerk of the Parliaments, to receive the Royal Assent. When the Sovereign is present in person (see p. 558), the Speaker prefaces the delivery of such bills with a short speech (*m*) concerning the principal measures which have received the assent of Parliament during the session, in which he does not omit to mention the supplies granted by the Commons.

(*k*) P.A.C. Reports 1 (1875) para 75, 76 ; 2 (1883) para 29, 30 ; 1 (1884) para. 2-6 ; 2 (1885) para. 41, 42 ; 1 (1889) para. 2-6 ; 2 (1929-30), para. 1 ; 2 (1930-31) para. 2 (1931-32), para. 2-5.

(*l*) 1 P.A.C. (1908), para. 11.

(*m*) L. J. (1820) 107 ; *ibid* (1830-31) 885, 1105.

## CHAPTER XXVI

### EXPENDITURE : FINANCIAL RESOLUTIONS

The procedure in respect of ordinary annual expenditure which is comprised in the estimates and is authorized *for a single year* by the Appropriation Act has been described in the preceding chapter. It remains to explain the procedure upon the other main branch of expenditure, expenditure for novel purposes requiring to be authorized by specific enactment of less limited duration, which is initiated, as a matter of ordinary practice, by resolutions—"Financial Resolutions" or "Money Resolutions," as they are called—with the recommendation of the Crown signified thereto.

It should be added that the procedure about to be explained is applicable to charges on the revenues of India, and also to certain matters which are not strictly expenditure but involve a loss to the Exchequer, such as the remission of debts owed to the Crown.

#### APPLICATION TO NEW EXPENDITURE OF THE GENERAL RULES OF FINANCIAL PROCEDURE

Before describing the varieties of new expenditure initiated by financial resolutions it will be convenient to show how the general rules governing financial procedure in Parliament (see p. 649) are modified in their application to this class of expenditure.

1. The legislative authorization, required by Rule 1, for such expenditure is given in each case by a special bill which (or the financial provisions of which) must originate in the House of Commons (see p. 735).

2. The proof, required by Rule 2, that the charge is initiated by the Crown, is given either in the form of a message under the sign manual or (ordinarily) by means of a royal recommendation signified by a Minister of the Crown to the resolution imposing the charge.

3. The appropriate committee, required by Rule 3, is a Committee of the whole House appointed *ad hoc*.

4. The intervals between stages, prescribed by Rule 4, apply now only to the stages of the financial resolution, and have, in view of the recently passed standing order (No. 64A), practically ceased to be enforced between the stages of the authorizing bills.

#### ARRANGEMENT OF CHAPTER

Following the order of the previous chapter, the material of this chapter is arranged under the following heads :—

- A. The varieties of expenditure which are initiated by financial resolutions.

B. The constitution and procedure of the Committees of the whole House which deal with such expenditure.

C. The procedure on the special bills which give legislative sanction to such expenditure.

# DISUSE OF OLDER FORMS OF PROCEEDING FOR THE INITIATION OF EXPENDITURE

According to modern practice the form of proceeding by which expenditure for novel purposes is initiated, and to which the King's recommendation is accordingly given, is a motion. This, when agreed to, becomes a resolution—hence the term “financial resolution.” In the older practice, other forms of proceeding, such as petitions, were regularly used for this purpose, and some are still on rare occasions so used.

A few words will be sufficient to dispose of the older forms of proceeding which are capable of being used for the purpose of initiating new expenditure.

**Public petitions.**—The use of petitions for initiating expenditure survives only in the case of the annual petition of the British Museum. The effect of S.O. No. 63 has become purely negative—to *prevent* the reception of petitions “for sums relating to public service”—and this result is reinforced by S.Os. Nos. 64 and 67.

In pursuance of S.Os. Nos. 63, 65 and 67, a petition praying directly or indirectly (except as stated below) for an advance of public money (*a*); for compounding or relinquishing any debts due to, or other claims of, the Crown (*b*); or for remission of duties or other charges payable by any person (*c*); or for a charge upon the revenues of India (*d*), will only be received if recommended by the Crown (*e*), and, in case of debts due to the Crown, on proof of the steps taken for the recovery of such debts. If a petition prays for the grant of money *by bill* it is now held not to require the King's recommendation because this would be given at the appropriate stage of the bill (H. C. Deb. (1943-44) 400, c. 583). Petitions distinctly praying for compensation, or indemnity for losses, out of the public revenues are refused, unless recommended by the Crown; but petitions are received praying that compensation may be made for losses contingent upon the passing of bills pending in Parliament (*f*).

**Instructions.**—According to modern practice the King's recommendation is not given to an instruction—mainly for technical reasons, as an instruction cannot without evident anomaly be moved in a committee. If an amendment which cannot be moved in committee without an instruction from the House also involves a charge, the practice is to vote in committee a resolution which has received the royal recommendation, and as soon as it has been agreed to by the House, to move an instruction to the committee on the bill that they have power to make provision in the bill pursuant to the resolution.

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(*a*) C. J. (1823) 261, 285; *ibid.* (1835) 42, 487, 507; *ibid.* (1857) 219; *ibid.* (1864) 117.  
(*b*) C. J. (1820) 167; *ibid.* (1826) 66; *ibid.* (1828) 212.  
(*c*) C. J. (1826) 35; *ibid.* (1837) 372.  
(*d*) C. J. (1856) 366.  
(*e*) C. J. (1818) 157; *ibid.* (1819) 422; *ibid.* (1831-32) 571; *ibid.* (1835) 487 *ibid.* (1849) 223, etc.  
(*f*) C. J. (1835) 136; *ibid.* (1837) 469.



This was done in the case of the Madras Railway Company (Purchase) Bill (C. J. (1908) 50, 56, 59); and when the Local Taxation National Debt and Assessors [Payments] Resolutions were agreed to, a similar instruction was given to the Committee on the Finance Bill (C. J. (1908) 198, 213, 219).

The following is an example of an instruction which has received the King's recommendation:

An instruction to a Committee of the whole House appointed to consider resolutions upon which a bill was to be founded received the royal recommendation, as imposing a liability upon the Consolidated Fund, and was ordered in the House itself, C. J. (1852-53) 555.

**Clauses in bills.**—By an analogous practice, which is now obsolete, when it was proposed to move a new clause which imposed a charge in a private bill, the royal recommendation was given, on the order being read for going into committee, to the new clause itself. Conway and Llanrwst Bill, C. J. (1861) 279 and 285.

## A. VARIETIES OF EXPENDITURE INITIATED BY FINANCIAL RESOLUTIONS

Since the normal form of procedure which is, subject to the unimportant exceptions mentioned, used for the initiation of expenditure is a resolution moved with the royal recommendation in a Committee of the whole House, it is necessary to indicate the kinds of expenditure and matters akin to expenditure which require this procedure. Matters which need this procedure fall under the general heading of "charges" (see p. 647)—a term which in this connection has a highly technical meaning. It will be necessary to show at the outset that not all matters which *prima facie* involve expenditure are "charges."

### TESTS USED TO DETERMINE WHETHER EXPENDITURE INVOLVES A "CHARGE"

It is not always easy to determine whether a particular proposal for expenditure actually imposes a charge and therefore requires the King's recommendation. The practice of the House has evolved certain tests for deciding this question, which may be summed up as follows. In order to constitute a charge upon public funds, expenditure must be (1) new and distinct; (2) payable out of the Exchequer; (3) effectively imposed.

(1) **A charge must be new and distinct.**—The question often arises whether a proposal for expenditure or for increased expenditure is not already covered by some general authorization. The test for determining this question in the case of a substantive proposal, *i.e.* a provision in a bill, as introduced, is a comparison with existing law.

(a) *Provisions in bills.*—The comparison of provisions in a bill with the law on the subject, as it exists, may show that, while such provisions undoubtedly involve expenditure, the power to impose such expenditure is covered by general powers conferred by statute.

Many examples of expenditure which, as being covered by pre-existing legal powers, is not treated as a charge are given on p. 722. This standard of reference is readily applicable in the case of the large and increasing

number of bills which are, in terms, amendments of previous statutes on the same subject. But in other cases considerable research is necessary to determine whether a provision which obviously involves expenditure is a "new and distinct" charge. The application of this test has given a somewhat uncertain answer to one difficult question—whether a provision for expenditure which proposes to finance that expenditure out of funds provided by statute for *another purpose* is or is not a "new and distinct" charge (see pp. 724-5).

(b) *Proposals by way of amendment.*—Amendments must be judged in relation to existing law for the purpose of determining whether they involve charges in the same way as provisions contained in a bill as introduced. But in practice, once a financial resolution in connection with a bill is passed, the important standard of reference for judging amendments is the resolution itself. The terms of a financial resolution are of the greatest importance in this connection. If they are drawn in general terms they will cover amendments which would be out of order if the terms were drawn in precise detail. This is a matter which has given the House some concern in recent times (see p. 666). The relation between a financial resolution and amendments to a bill is a very technical subject which is dealt with in the section on procedure in committee on a bill (see p. 526).

(2) *Expenditure, to be a charge, must be payable out of the Exchequer.*—This rule depends upon the provision of S.O. No. 63, which defines a charge upon the public revenue as either "payable out of the Consolidated Fund" or "out of money to be provided by Parliament." It excludes not only payments out of funds for public purposes which receive no grants from the Exchequer, such as Queen Anne's Bounty (see p. 729), but also payments out of funds which *are* fed by grants from the Exchequer, such as the Unemployment Insurance Fund, unless payments out of the Exchequer may be thereby attracted. Apart from any such result the imposition of burdens upon such funds, even to the point of reducing them to insolvency, involves no charge and may be initiated without the recommendation of the Crown.

The same rule excludes from the category of a "charge" any method of financing expenditure by intercepting the proceeds of taxation or other sources of revenue before they are paid into the Exchequer (see p. 725).

(3) *A charge must be effectively imposed.*—The effective imposition of a charge has been extended by an amendment of S.O. No. 63 to include the imposition of charges upon "money to be provided by Parliament" which before 1866 had been excluded, probably on the ground that it implied no immediate charge but only authorized the presentation of estimates (see p. 718). But there remain certain recognized methods of recommending expenditure without proposing a charge—by moving an abstract resolution (so long as no definite sum of money is proposed) (g) and by the report of a select committee (see p. 728).

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(g) Private ruling of Speaker in relation to a motion on going into committee on East India Revenue Accounts, 1900. But see motions relating to County Court Judges (Salaries), C. J. (1869) 289, and Payment of Members, *ibid* (1911) 400, where definite sums of money were mentioned.

These tests have the effect of excluding from the category of "charges" a considerable number of matters which *prima facie* involve expenditure.

All proposals for new expenditure are subjected to these tests for the purpose of deciding whether they require the King's recommendation, and it will be necessary to give examples of the application of these tests. Examples will first be given of "charges" of various distinguishable types arranged under the headings given below. These will be followed by examples of matters which, though *prima facie* involving expenditure, have been decided not to be "charges."

It must be noted again that the same rules apply to charges proposed not only by way of resolution but also (except where so stated) by amendments to resolutions or bills, and to the increase of existing charges as well as to the imposition of new charges. The examples to be given will include all these variations.

## MATTERS REQUIRING THE KING'S RECOMMENDATION

### I. MONEYS TO BE PROVIDED BY PARLIAMENT

The most frequent case of expenditure of this type is that of charges upon moneys to be provided by Parliament for salaries and other expenses caused by the imposition of novel duties upon the executive government by the legislation of the session.

A resolution authorizing such expenditure may be described shortly as a preliminary to the presentation of an estimate. It initiates the process of giving legislative sanction to annual expenditure for new purposes as yet unauthorized. The sanctioning of such expenditure thus undergoes two stages (1) it is initiated by a money resolution imposing a charge payable "out of moneys to be provided by Parliament" which receives confirmation by specific enactment; (2) it is subsequently presented to the House of Commons in the form of an estimate which receives final sanction in the Appropriation Act. Although a resolution of this type initiates no immediate charge, but is intended only to authorize the eventual presentation of an estimate, it is in view of the terms of S.O. No. 63 regarded as containing a "charge" in the technical sense and could not be brought before the House without the recommendation of the Crown.

Instances of charges imposed upon moneys to be provided by Parliament occur in abundance every session. The following examples may be given:

(1) The expenses connected with the establishment of a new department (C.J. (1919) 47, 54, Ministry of Health, etc.).

(2) The expenses arising out of the imposition of new duties on an existing department or authority (C. J. (1926) 191, Expenses in connection with betting duty).

When the money to cover such expenses is required in the current session it may be provided by a Consolidated Fund Bill passed after the voting of a supplementary estimate or if this involves too much delay by a payment out of the Civil Contingencies Fund.

(3) A charge is also involved by any proposal whereby the Crown would incur a liability or a contingent liability payable out of money to be voted by Parliament (C. J. (1920) 102, Overseas Trade [Credits and Insurance]).

(4) The transfer of expenses from rates to Estimates involves a charge

(Labourers' Home Enfranchisement (Ireland) Bill 1912, C. J. (1912-13) 61 ; H. C. Deb. (1912) 35, c. 1495).

## 2. CHARGES UPON THE CONSOLIDATED FUND

Another type of expenditure, initiated by money resolutions, examples of which occur in the legislation of every session, is the imposition of charges to be paid out of the Consolidated Fund. The following examples may be given of such charges which require the King's recommendation.

(1) The imposition of an annual charge on the Consolidated Fund.

The salaries of Members of the Unemployment Assistance Board. C. J. (1933-34) 37.

(2) Contingent or prospective charges on, or guarantees by, the Consolidated Fund.

Guarantee of payment of interest or principal of loans raised under the Electricity (Supply) Bill, 1926. C. J. (1926) 173.

Liability for deficiency in the Suits Fund of the Supreme Court in Ireland. C. J. (1908) 201, 214.

Guarantee of payment of dividends on local loans stock under the National Debt and Local Loans Bill, 1887. C. J. (1887) 275, 303.

Guarantee of the principal and interest of stock issued by the Government of Newfoundland. C. J. (1933-34) 24.

See also 4. below.

(3) Issue of money from the Consolidated Fund to the Civil Contingencies Fund.

As an exceptional measure after the 1914-18 war, the Civil Contingencies Fund was used to finance certain government undertakings, and a resolution of the House to effect this authorized the payment of £120,000,000 out of the Consolidated Fund into the Civil Contingencies Fund. C. J. (1919) 36, 41.

(4) The making of advances out of the Consolidated Fund to be repaid out of moneys provided by Parliament.

The Cattle Industry (Emergency Provisions) Bill authorized advances to the Cattle Fund out of the Consolidated Fund, which were to be repaid out of moneys provided by Parliament before the end of the financial year. C. J. (1933-34) 288.

(5) The authorization of a single payment out of the Consolidated Fund.

A sum of £20,000,000 was provided in 1833 in connection with the abolition of slavery. C. J. (1833) 383, 629, 638. See also C. J. (1914) 238, 272.

## 3. CONTINGENT OR PROSPECTIVE CHARGES UPON THE REVENUES OF INDIA

(1) Under S.O. No. 67, no petition will be received, or motion proceeded with, for a charge on the revenues of India, unless recommended by the Crown.

(2) The raising of money in the United Kingdom on the security of the revenues of India. C. J. (1908) 351, 380. See also East India Loans [Railways and Irrigation] *ibid.* (1922) 68, 86.

(3) A general provision for the charging on, and payment out of, the revenues of the Governments constituted by the Government of India Bill, and of the Governor-General in Council, of any expenditure which was, under the provisions of the Bill, to be charged on or paid out of these revenues respectively, was included in the financial resolution for the Government of India

Bill, 1935. C. J. (1934-35) 70. For a recent charge upon the revenues of India, see East India Loans, 1937. C. J. (1936-37) 84.

#### 4. GUARANTEES OF LOANS RAISED BY FOREIGN, COLONIAL, ETC. GOVERNMENTS

The King's recommendation was signified to resolutions for guarantees in the following cases:

Guarantee of an annuity payable in respect of a loan to be raised by the Government of Greece. C. J. (1898) 105, 107.

Guarantee of payment of principal and interest on any loan issued by the Government of the Irish Free State, up to a stated amount. C. J. (1924-25) 29.

Guarantee of payment of principal and interest on loans to be raised by Palestine and East African Governments. C. J. (1926) 280.

#### 5. SUBSTITUTION OF STAMP DUTIES INVOLVING POSSIBLE INCREASE IN PARTICULAR CASES

The substitution of stamp duties by private or provisional order bills (see p. 899,) requires the King's recommendation.

Liverpool, London and Globe Insurance Company Bill [Lords], C. J. (1904) 156, 160; Perth County Buildings Order Confirmation Bill, 1927, *ibid.* (1927) 356, 358; see also *ibid.* 364, 366.

#### 6. REMISSION OR COMPOUNDING OF DEBTS TO CROWN

The remission or compounding of a debt due to the Crown requires, under S.O. No. 64, to be initiated in a Committee of the whole House, and by practice it also requires the King's recommendation. Various matters are treated as, in essence, the remission of Crown debts, and accordingly as requiring the King's recommendation. Remission of liability to duties such as the land tax is not regarded as remission of debt but exemption from taxation, and does not require a resolution (2).

(1) Extension of time for repayment of sum deposited under standing order (which would otherwise be forfeited).

Great Western Railway Bill. C. J. (1890) 257, 261.

(2) Repayment of sums deposited as security.

In the case of two private Bills. C. J. (1884-85) 149, 151.

(3) Provision in a private bill for remitting or compounding sums due to the Crown.

The Conway and Llanrwst Railway Bill. C. J. (1861) 279, 285.

(4) Extension of period within which sums issued to the Civil Contingencies Fund are to be repaid to the Exchequer.

C. J. (1920) 253, 271.

(5) Reduction of repayments due to the Exchequer.

The Finance Act, 1921, required the King's recommendation for a provision authorizing the writing off of advances made under the Civil Contingencies Fund Act, 1919. C. J. (1921) 159, 165.

(6) Remission of statutory advances made by the Treasury.

A not infrequent provision in the periodical Public Works Loans Bills. C. J. (1881) 360, 367; *ibid.* (1936-37) 95; but see p. 722.

(7) Compounding of debt to the Crown.

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(i) Post Office (Sites) Bill, 1927.

The compounding of a sum due from the Irish Free State representing its liability in respect of the Local Loans Fund. C. J. (1927) 35-36; H. C. Deb. (1927) 202, c. 1808. See also Eire (Confirmation of Agreements) Resolution, C. J. (1937-8) 242.

#### 7. INCREASE OF CHARGE BY EXTENSION OF TIME

(1) Transfer to Consolidated Fund of expenses chargeable upon moneys provided by Parliament.

The expenses of Returning Officers at parliamentary elections. C. J. (1919) 28, 30; H. C. Deb. (1919) 112, c. 1334.

(2) Extension for one year of building bonus (without increase of total grant).

The Ministry of Health (Miscellaneous Provisions) Bill, 1920. C. J. (1920) 414, 421.

(3) Continuation of expiring enactments involving expenditure.

The Unemployment Insurance (Expiring Enactments), 1933, Bill continued certain unemployment insurance charges. C. J. (1932-33) 233.

(4) Extension of charge by inclusion of Act in Expiring Laws Continuance Bill.

Debts Clearing Offices and Import Restrictions Act, 1934. C. J. (1935-36) 28; *ibid.* (1936-37) 25-26.

(5) Increase of charge through postponement of date of day appointed for commencement of Act.

Unemployment Assistance (Temporary Provisions) Bill, 1935. C. J. (1934-5) 72; Northern Ireland Land, 1928-29. C. J. (1928-29) 57.

(6) Increase of period for making advances, without increase of total amount of liability.

Overseas Trade (Credits and Insurance) Amendment Bill, 1921.

#### 8. INCREASE OF CHARGE BY EXTENSION OF PURPOSES, ETC.

When a bill contains provisions extending the purposes of expenditure already authorized by statute, such provisions may require the King's recommendation. The following examples may be given:

(1) Extension of cases in which compensation can be paid.

The Defence of the Realm (Acquisition of Land) Act, 1916, provided for compensation to be paid by the Government in respect of land acquired. The Act of 1920 extended this compensation to other cases, and accordingly required a money resolution. C. J. (1920) 463, 470.

(2) Extension of classes of insured persons.

National Health Insurance Bill, 1928. C. J. (1928) 99-100.

(3) Extension of Empire settlement grant to settlement at home.

By the Empire Settlement Bill, 1928, the objects of the Act of 1922 were altered and extended, although the original amount of the grant was not to be exceeded. Provision for this purpose was held to require the King's recommendation. (Cf. Home and Empire Settlement Bill, 1933.)

#### 9. INCREASE OF AMOUNT OF CHARGE

The Education Act, 1921, directed the Board of Education to pay grants to local education authorities of not less than fifty per cent. for expenditure

lawfully incurred. The Children (Provision of Footwear) Bill, 1928, proposed to substitute ninety per cent. The necessary royal recommendation was not given, and the bill did not proceed beyond second reading. C. J. (1928-29) 57.

The Education (School Attendance) Bill, 1930-31, made provision for the payment of maintenance grants, one-half of the cost of the grant being payable out of the Exchequer. C. J. (1930-31) 22. An amendment to this bill proposing to transfer the whole cost to the Exchequer was ruled out of order. H. C. Deb. (1930-31) 245, c. 1272.

#### 10. ALTERATION OF INCIDENCE OF CHARGE.

In Committee on the Defence Loans Bill, 1937, an amendment to shorten the period during which a particular sum was to be repaid, was ruled out of order on the ground that the amendment would place a heavier burden on the taxpayers in the earlier years of repayment. (H. C. Deb. (1936-37) 321, c. 43-44.)

### MATTERS INVOLVING EXPENDITURE WHICH ARE NOT " CHARGES "

The matters which, though *prima facie* they involve expenditure, have for the reasons stated in pp. 716-7 been ruled not to involve " charges " may be summarized under the following heads :

#### 1. EXPENDITURE COVERED BY EXISTING STATUTORY AUTHORITY

(1) Advances on security of public works out of money already set apart for that purpose.

In the Railways (Ireland) Bill, 1847, advances out of the Consolidated Fund, on the security of public works, did not require to be recommended by the Crown, as general authority had already been given for such purposes by an Act of the previous year (9 & 10 Vict. c. 80). C. J. (1847) 72.

(2) Money administered by Public Works Loan Commissioners (unless debts are remitted).

The provisions of the annual Public Works Loans Bills empowering the National Debt Commissioners to issue sums of money for the purposes of local loans, as also those writing off the principal of specified loans from the assets of the Local Loans Fund (but not the release of debtors from their liabilities) do not require the King's recommendation, since the National Debt and Local Loans Act, 1887, gives standing authority for such issues, and makes the Consolidated Fund security for deficiencies in the Local Loans Fund. The royal recommendation given to the enabling provisions of the principal Act authorized once for all the application of such provisions in subsequent bills.

Other instances of the application of this principle are, the Land Purchase (Ireland) Bill, 1888, Parl. Deb. (1888) 330, c. 1550 ; and the Small Holdings (No. 2) Bill, 1909.

In the Allotments Bill, 1925, no King's recommendation was required for lending by the Public Works Loan Commissioners to any approved society money required for purchasing land to be used as allotments.

(3) Transfer of charges from the Consolidated Fund to the Estimates.

The transfer to the Estimates of a payment chargeable by law upon the Consolidated Fund is its conversion from a statutory standing charge

to a payment which requires to be annually voted (see pp. 651-2). Provisions and amendments of this nature are accordingly accepted without being recommended from the Crown.

On the third reading of the Metropolitan Police Stations, etc. Bill, the Speaker ruled that it was unnecessary for the bill to have been presented on resolution, as it merely transferred charges from the Consolidated Fund to the Estimates. *Parl. Deb.* (1857) 147, c. 1220.

Similarly in committee on the Ireland Development Grant Bill, 1903, which had been brought in upon a resolution making the grant a charge upon the Consolidated Fund, amendments were allowed to be introduced proposing that the grant should be paid in each year out of money to be provided by Parliament.

(4) Liability (to pay damages) covered by existing law.

Power was given by an instruction to the Committee on the Restoration of Order in Ireland (Indemnity) Bill, 1923, to assess compensation to persons deprived of a right of action for damages, etc. by the bill. As the existing law gave general authority for such payments the King's recommendation was not needed. *C. J.* (1923) 171; *H. C. Deb.* (1923) 164, c. 1627.

(5) Reimposition of a suspended charge.

The charge for the road improvement grant had been authorized by a resolution of a Committee of the whole House in relation to the Finance Act (1909-10) Amendment Act, 1910. The Finance (No. 2) Act, 1915, suspended the grant. The Finance Act, 1920, reimposed it without a recommendation from the Crown.

(6) Expenditure of Registration Officers under Juries Bill [Lords] 1922.

Provision for the expenses of registration officers under the Juries Bill [Lords], 1922, was held not to require the King's recommendation in view of clause 1 (10) of that bill which provided that such expenses should be deemed to be expenses under the Representation of the People Act, 1918.

The Representation of the People Bill, 1920, involved a large increase in the expenses of registration, but this was held to be covered by the powers given by the Act of 1918.

(7) Charges in Consolidation Bills.

Charges included in Consolidation Bills which are already authorized by any of the acts consolidated do not require the King's recommendation, see *Pacific Cables Bill*, 1927, clause 5. Where a bill consolidates with amendments, the King's recommendation may be needed. See *Factories Bill*, 1937, and related resolution. *C. J.* (1936-37) 114.

(8) Under powers covered by Post Office Act, 1908.

Expenditure on the purchase of lands in subsequent Post Office Sites Bills is covered by the general powers conveyed by the Post Office Act, 1908.

(9) Payment of costs by Crown.

Provision for the payment of costs by the Crown in particular cases does not require the King's recommendation, as general provision for the purpose exists.

*Cf.* *Prevention of Corruption Bill* [Lords], 1906, and *Administration of Justice (Miscellaneous Provisions) Bill*, 1933.

## 2. CHARGE ON PUBLIC FUNDS OTHER THAN THE CONSOLIDATED FUND

The imposition of charges on funds, other than the Consolidated Fund itself, does not require the royal recommendation, unless it involves an



increased payment out of the Consolidated Fund, or increases the liability (e.g. through a guarantee) upon that fund, or automatically attracts a grant from moneys provided by Parliament (see p. 718).

(1) Payments for compensation charged on Small Holdings Account.

The Small Holdings (No. 2) Bill, 1909, was held not to require a financial resolution, although it put a charge on a fund partly financed out of moneys provided by Parliament, because the parliamentary contribution was not necessarily increased.

(2) Charges on Metropolitan Police Fund.

Charges imposed on this fund by the Metropolitan Police (Staff Superannuation and Police Fund) Bill, 1931; the Police Pensions Act, 1926; the Police (Appeals) Act, 1927; and other Acts have not required the King's recommendation, because the Exchequer grant to this fund is made by annual estimate which (theoretically) does not depend upon the charges put upon the Fund.

(3) Payments out of the Rating Relief Suspense Account established under s. 24 of the Finance Act, 1928.

Agricultural Rates Bill, 1929, clause 2.

### 3. AVOIDANCE OF CHARGE BY METHOD OF FINANCING EXPENDITURE

Examples are given below of forms of expenditure which have been ruled at various times not to involve charges owing to the manner in which the expenditure was proposed to be financed. The principal methods referred to may be called the "variation of appropriation" and the "interception and diversion of revenue." A variation of appropriation occurs when money which is payable by law to a specified service is made payable to a new service. This has been ruled not to constitute a "new and distinct charge" because no additional money is thereby payable out of the public revenue. An existing charge is utilized for a new purpose—that is all. A case of "interception and diversion of revenue" occurs when the proceeds of certain taxes are paid, not into the Exchequer, but into a special fund for the purpose of financing some new object of expenditure. This has been ruled not to be expenditure falling under the definition, contained in S.Os. Nos. 63 and 68, of a charge upon public funds which requires to originate in a Committee of the whole House with the King's recommendation. For it is neither "payable out of the Consolidated Fund" nor "out of money to be provided by Parliament (k)."

The examples given below are precedents which require due consideration. It is doubtful if they would be now followed. Indeed in a recent case a bill which proposed to substitute a new purpose for an existing statutory grant was ruled out of order because it had not been introduced on a resolution recommended by the Crown (l).

The exemption of these cases from the provisions of the standing order was made on technical grounds and seems hardly within the spirit of the rules. It is true that in the cases given below the proposals emanated from

(k) See Speaker's ruling, Parl. Deb. (1896) 41, c. 1698-1700. The Chancellor of the Exchequer on being appealed to on this occasion stated that he thought that, for the sake of the revenue, the standing order ought to apply to cases of this kind, and that he was considering how it ought to be amended (*ibid.* 1701). Notice was actually given of an amendment to the order, but it was not proceeded with. See also *ibid.* 42, c. 1324.

(l) Home and Empire Settlement Bill, 1928. See also Northern Ireland Land Bill, 1929 (which was ruled to require a financial resolution in respect of provisions varying the conditions of grants).

Ministers of the Crown, and consequently the principle of the financial initiative of the Government was not in substance abrogated. But from the abandonment of the machinery for enforcing the principle it would follow that the proposal of such methods of financing expenditure would be equally open to private Members, and even in the cases referred to there would have been no ground for refusing amendments offered by private Members for increasing the proposed expenditure (*m*).

On the same principle an amendment was allowed to be moved to the Finance Bill, 1905, which proposed to intercept a portion of the proceeds of the estate duty and pay it direct to the National Debt Commissioners (*n*).

This principle has not been applied recently except to revenue other than the proceeds of taxation. (See 2 (d) below.)

It may be added that an *amendment*, belonging to the category of "variation of appropriation," i.e. one which seeks to divert expenditure authorized by a financial resolution from the purpose for which it was recommended by the Crown to another purpose, is always ruled out of order.

(1) **Variation of Appropriation.**—The following instances may be given :

(a) Diversion of Consolidated Fund grants.

The University Education (Ireland) Bill, 1882, which proposed to divert to the University of Ireland grants out of the Consolidated Fund which were payable by statute to the Queen's Colleges in Ireland was allowed to proceed to second reading without the royal recommendation being required. C. J. (1882) 114.

(b) Diversion of sums previously allocated.

The Public Buildings Expenses Bill, 1913, diverted the surplus of a sum allocated to public offices on land at Westminster by section 9 of the Finance Act, 1908, to the erection of other buildings and works. The King's recommendation was not required.

(c) Government of Sudan Loan (Amendment) Bill, 1922.

By this Bill, which was introduced without a financial resolution, money was diverted from one object and added to the money allocated to another object by the principal Act. Both objects dealt with irrigation.

(d) Judicature and Development Grant (Ireland) Bill, 1904.

This bill proposed to apply money saved by the suppression of Judges' salaries to the Irish Development Grant. The Speaker ruled privately that no financial resolution was required.

(2) **Interception and diversion of revenue.**—The following instances may be given of bills for this purpose which were treated as exempt from S.Os. Nos. 63 and 68 (see remarks on p. 717).

(a) The Local Government Bill, 1888, the Local Taxation (Customs and Excise) Bill, 1890, the Agricultural Land Rating and the Agricultural Rates, Congested Districts, etc. (Scotland) Bills, 1896, the Tithe Rentcharge (Rates) Bill, 1899, and other bills which diverted from the Exchequer to the Local Taxation Account, for the purposes of the bills, a portion of the probate duty or other specified duties.

(b) Bills applying land revenues of the Crown to improvement of Crown property, although by statute such revenues are carried to the Consolidated Fund.

(*m*) See remarks of Sir Harry Fowler, Parl. Deb. (1896) 41, c. 1695-98.

(*n*) C. J. (1905) 208 ; Parl. Deb. (1905) 146, c. 1273.

The Hainault Forest Bill, 1851; Pimlico Improvement Bill, 1852; Sunk Island Roads Bill, 1852; Whichwood Forest Bill, 1853.

(c) Application of proceeds of sale of government property.

Military Works Bill, 1903. Parl. Deb. (1903) 126, c. 235. C. J. (1903) 337, 340.

(d) Diversion of proceeds of foreign payment.

The China Indemnity (Application) Bills, 1924 and 1925, which proposed to pay into a specially constituted fund the proceeds of the China Indemnity, which were under the Finance Act, 1906, s. 7 (2), payable into the Exchequer towards the new sinking fund. H. C. Deb. (1924) 174, c. 1886-88.

#### 4. EXEMPTION FROM PENALTIES DUE TO CROWN

Provisions for this purpose contained in the Under-Secretaries Indemnity Bill, 1864, were held not to need the King's recommendation. Parl. Deb. (1864) 175, c. 83.

#### 5. IMPLYING BUT NOT IMPOSING A CHARGE

(a) Abolition of official contributions to Superannuation Fund.

The Superannuation Act Amendment Bill, 1857, was held not to come within the scope of the standing orders because, although the effect of the Bill would be to put a large class of salaried officers on the estimates for superannuation pensions, its immediate purpose was no more than to repeal a provision for contributions from official salaries. Parl. Deb. (1857) 146, c. 689-707.

(b) Cases of increase, without specification of salary, in numbers of salaried officials.

In the case of the Police Bill, 1890, no money resolution was taken. On the other hand, in the case of the Small Landholders (Scotland) Act (1911) Amendment Bill, 1914, a money resolution was held to be necessary after presentation (o). In the Indian High Courts Bill, 1911, the insertion of provision for payment of salary was required before the presentation of the bill. An increase in the number of Forestry Commissioners was effected in 1927 without a financial resolution, because this did not increase the number of paid commissioners.

### METHODS OF ADVOCATING EXPENDITURE WITHOUT THE KING'S RECOMMENDATION

#### I. ADDRESSES PRAYING FOR THE ISSUE OF PUBLIC MONEY

A grant of public money can be obtained by a motion, made in accordance with the provisions of S.Os. Nos. 66 and 68, for the appointment of a Committee of the whole House upon a future day to consider a resolution for an address to the Crown asking for a sum of money for the purposes therein specified, or for action involving expenditure, concluding with an assurance that the House will "make good" the grant or the expenses attending the action desired (p). This procedure places the initiative

(o) C. J. (1914), 250.

(p) C. J. (1828) 456; *ibid.* (1840) 474 (Church Extension); *ibid.* (1841) 57; *ibid.* (1843) 415 (Danish Claims); *ibid.* (1864) 205; Parl. Deb. (1864) 174, c. 1922 (Mr. Bewicke's case).

for incurring expenditure on the House, and has occasionally been employed in the past for suggesting expenditure against the wishes of His Majesty's Ministers. But further progress in the matter depends upon the King's consent to give directions as requested, which is conveyed in the answer to the address (*q*).

If a motion for an address for public money is submitted to the House in any other manner, the Speaker declines to propose the question to the House (*r*), a rule which has been held to apply to an address to the Crown to offer a reward for the apprehension of a witness who had absconded (*s*), and to an address for the issue of gun-metal to be cast into a statue of a distinguished soldier (*t*).

This procedure is now practically limited to such cases as the erection of monuments to distinguished public men, when it is felt to be more graceful that the proposal should emanate from Parliament rather than from the Government (*u*). The consent expressed in His Majesty's answer to the address gives the Government authority to present an estimate, but the practice is not to present this immediately but to wait till the year in which the monument is completed.

The procedure may be illustrated by a recent case. A resolution was agreed to for the House to resolve itself into committee on a future day to consider a motion for an address to His Majesty praying him to give directions in connection with a memorial to Earl Beatty, C. J. (1935-36) 206. On the motion for this purpose speeches of commemoration were made by the Prime Minister and leaders of parties, H. C. Deb. (1935-36) 311, c. 1537-41. In Committee of the whole House an address was moved in similar terms with the addition of the words "and to assure His Majesty that this House will make good the expenses attending the same," and agreed to without debate *nemine contradicente*, C. J. (1935-36) 215. When the resolution had been agreed to by the House, the address was ordered to be presented in the usual way (*ibid.* 222). In his answer His Majesty intimated that he would be pleased to give the directions required (*ibid.* 228).

On other occasions the customary speeches have been made in committee on the motion for the address. But generally on these proceedings the speeches are, by way of exception to the general rule, made on the motion for appointing the committee, since, being of a ceremonial character, they are felt to be more appropriate to occasions when the Speaker is in the chair.

A similar procedure is adopted for the purpose of an address to the Crown praying for some signal mark of royal favour on behalf of a retiring Speaker, but in this case the preliminary committee is dispensed with and

(*q*) In 1811, the Prince Regent in reply to an address declined to issue the money. A motion to censure Ministers for this answer was negatived, C. J. (1810-11) 357, 383; Parl. Deb. (1811) 20, c. 343; Colchester II, 152, 332.

(*r*) C. J. (1843) 321; Parl. Deb. (1861) 164, c. 997.

(*s*) C. J. (1851) 188.

(*t*) Viscount Gough, C. J. (1870) 355, 362.

(*u*) Sir Robert Peel, C. J. (1850) 512; Viscount Palmerston, *ibid.* (1866) 100; Earl of Beaconsfield, *ibid.* (1881) 230; Mr. Gladstone, *ibid.* (1898) 224; Marquis of Salisbury, *ibid.* (1904) 198; Sir Henry Campbell-Bannerman, *ibid.* (1908) 191; Mr. Joseph Chamberlain, *ibid.* (1920) 364. The same procedure was followed in the case of public monuments to Field Marshal Earl Roberts, *ibid.* (1914-16) 20, and Field Marshal Earl Kitchener, *ibid.* (1916) 108; Earl of Oxford and Asquith, *ibid.* (1932-33) 120. Addresses for monuments to Lord Chatham in 1778, and Mr. Pitt in 1806, were voted without a committee, being before the date of the standing order.

the address is moved in the House itself (*a*). It is not till His Majesty's answer is received that a Committee of the whole House is set up, and on the resolution of this committee, when agreed to by the House, a bill is introduced granting the retiring Speaker a pension payable out of the Consolidated Fund.

## 2. PROPOSAL OF EXPENDITURE BY METHODS NOT DIRECTLY EFFECTIVE

Certain methods of advocating expenditure without the royal recommendation are permitted on the ground that, as they are ineffective *per se* or no more than expressions of opinion, they do not involve the House in conflict with the standing orders.

**Public bills.**—Bills devising a large scheme for public expenditure, accompanied by provisions for the application of the same, have been brought in without a preliminary committee, the money clauses being printed in italics (*b*). In such cases, the principle of the bill is discussed, and, if approved on behalf of the Crown, the necessary pecuniary provision is subsequently made; otherwise further progress of the bill is prevented by the refusal of the royal recommendation.

**Abstract motions.**—Motions advocating public expenditure, or the imposition of a charge, if the motion be framed in sufficiently abstract and general terms, can be entertained, and agreed to by the House (*c*). Resolutions of this nature are permissible because, having no operative effect, no grant is made or burden imposed by their adoption (see p. 717).

**Reports of select committees.**—By former practice, the House declined to receive a report from a select committee which proposed compensation for losses incurred by certain patentees, because it had not been recommended by the Crown (*d*), but according to recent practice no objection has been taken to resolutions reported by select committees advocating an outlay of public money (see p. 603).

## PROVISIONS EXEMPT FROM THE FINANCIAL STANDING ORDERS

### I. CHARGES UPON RATES, ETC.

The procedure upon charges which, though they "fall upon the people" (S.O. No. 68), do not fall upon the public revenue but upon rates for local purposes is peculiar. Bills imposing such charges are not required to be preceded by resolutions of a Committee of the whole House with the

(*a*) C. J. (1884) 72; *ibid.* (1895) 147; *ibid.* (1905) 247; *ibid.* (1921) 114; *ibid.* (1928) 214.

(*b*) Railways (Ireland) Bill, Parl. Deb. (1834) 89, c. 773; Electric Telegraphs Bill, *ibid.* (1867-68) 191, c. 678; Railways (Ireland) Bill, *ibid.* (1872) 209, c. 1952. But the Speaker declined to propose the question for leave to introduce a bill, the main purpose of which involved the creation of a charge Superannuation Acts (Amendment), H. C. Deb. (1928-29) 226, c. 216.

(*c*) National Monuments, &c., C. J. (1844) 206; Emigration, *ibid.* (1847-48) 600; River Thames (amendment on going into committee of supply), *ibid.* (1857-58) 294; Parl. Deb. (1857-58) 151, c. 1168; National Defences, C. J. (1859) 318; Recreation Grounds, *ibid.* (1860) 246; Sailors' Homes, *ibid.* (1863) 181; County Court Judges (salaries), *ibid.* (1868-69) 289; Harbours of Refuge, *ibid.* (1884-85) 182; *ibid.* (1871) 98; *ibid.* (1876) 374; Irish Sea Coast Fisheries, *ibid.* (1874) 120; Volunteer Equipments, *ibid.* (1890) 187; Payment of Members, *ibid.* (1911) 400, etc.

(*d*) C. J. (1837) 478.

royal recommendation (e), nor are the clauses providing for such charges printed in italics (f). Although such charges fall outside the "public money" standing orders, yet the principle enforced by S.O. No. 68 is so far observed as to prevent *amendments* imposing or increasing such charges from being moved to a bill while the Speaker is in the chair (g). Accordingly, when clauses or amendments imposing charges on rates, tolls and other local burdens are submitted for consideration on the report stage of a bill, it is the practice to recommit the bill to a Committee of the whole House in respect of the clauses or amendments in question (see p. 541). The practice is similar to that in respect of amendments to a bill at the same stage, which would impose a charge upon public funds (see p. 539), with the difference that in the case of charges upon rates no preliminary proceedings upon a financial resolution recommended by the Crown are required, and the bill can be recommitted and the clauses or amendments considered (if necessary) forthwith (h).

An instruction to a committee on a bill has been ruled out of order on the ground that it imposed a charge upon rates (i).

## 2. CERTAIN FUNDS FOR PUBLIC PURPOSES

Charges upon funds of a public or semi-public nature, which are not fed from the Exchequer, such as funds derived from fees, like the former fee funds of the Court of Chancery (k), or funds made up by statutory contributions, such as the Licensing Fund or the Wheat Fund or funds administered, like the Queen Anne's Bounty, by the Ecclesiastical Commissioners (l), are not within the scope of the financial standing orders (m).

## 3. PROVISIONS INVOLVING THE REDUCTION OF CHARGES

No special form of procedure applies to proposals to reduce existing charges, and they may be moved in the House or in committee without the royal recommendation.

A proposed reduction of a charge may consist in reducing its amount, or restricting its objects, or inserting limiting conditions, or shortening the period of its operation. The transference of a charge from the

(e) Metropolis Police Bill, C. J. (1929) 233; Coal Trade (Port of London) Bills, *ibid.* (1831) 558; Poor Law Amendment Bill, 1834; Municipal Corporations Bill, 1835; Poor Relief (Ireland) Bill, C. J. (1837-38) 90; Collection of Rates Bill, 1839; Highway Rates Bill, C. J. (1839) 363; Prisons (Scotland) Bill, *ibid.* (1839) 22; Metropolis Local Management Bills, 1855 and 1858; Union Relief Aid (Distress in Manufacturing Districts) Bill, 1862; Rating, Valuation, and Consolidated Rate Bills, 1873. See, however, instruction following Committee of the whole House in case of Poor Laws (Ireland) Rate in Aid Bill, 1849, as it levied a general rate, the funds being under the management of government officers, C. J. (1849) 226.

(f) Parl. Deb. (1865) 179, c. 480; *ibid.* (1857-58) 151, c. 1516; *ibid.* (1862) 165, c. 1826; *ibid.* (1857-58) 151, c. 1601.

(g) Parl. Deb. (1896) 41, c. 488-90; *ibid.* (1902) 109, c. 930; *ibid.* (1905) 151, c. 407; *ibid.* (1907) 180, c. 900; *ibid.* (1908) 196, c. 109; H. C. Deb. (1916) 81, c. 2019, 2024. In the case of a private bill, Parl. Deb. (1896) 41, c. 502.

(h) C. J. (1842) 424; *ibid.* (1864) 316; *ibid.* (1865) 356; *ibid.* (1916) 58; *ibid.* (1918) 122, 216.

(i) H. C. Deb. (1912-13) 43, c. 706; *ibid.* (1929-30) 236, c. 1878.

(k) Parl. Deb. (1862) 165, c. 1561 (Courts of Justice Building Bill).

(l) See Tithe Bill, 1925.

(m) C. J. (1878-79) 332, 350; *ibid.* (1882) 451; Parl. Deb. (1893-94) 10, c. 1413.

Consolidated Fund to "moneys to be provided by Parliament," *i.e.* its transformation from an indefinitely continuing to an annually renewable charge (see pp. 651-2) may be regarded as an instance of reducing the duration of a charge.

This practice leads to an apparent anomaly in the case of amendments moved to a bill which abolishes or reduces a charge authorized by existing law. Amendments to such a bill, which are designed to restore a portion or the whole of the charge which the bill proposes to reduce or abolish, are in order without the need of a preliminary financial resolution, and—on the report stage—even though they raise the charge authorized by the bill as reported from committee (see p. 742). Such amendments are not in fact treated as proposing a charge but as determining the question to what extent, if any, an existing charge shall be reduced.

## B. CONSTITUTION AND PROCEDURE OF MONEY COMMITTEES

Rule 3 of the general rules of procedure as applied to financial resolutions (see p. 655) requires that consideration of a charge by the House must be preceded by a preliminary consideration in a specially appointed Committee of the whole House. This rule is applied in conjunction with the rule which requires that the exercise by the Crown of its financial initiative shall be signified at this stage. The following section describes the manner in which the various methods of signifying the exercise of the royal initiative are combined with the various methods of appointing the requisite committee of the whole House. It also explains the procedure in such a committee, when appointed.

### I. METHODS OF SIGNIFYING THE EXERCISE OF THE ROYAL INITIATIVE

#### (1) DEMANDS BY MESSAGE FROM THE KING UNDER THE SIGN MANUAL

The object of such a message is usually to obtain a grant for the maintenance of the dignity and well-being of the Crown or for the reward of men who have rendered distinguished service to the Empire. The message is formally presented to the House by a Minister of the Crown in the prescribed manner (see p. 781) and the reply of the Commons is either to refer the demand to the Committee of Supply, or to resolve to go into committee upon it on a future day. In the former case no estimate is presented but a resolution stating the terms of the grant is moved in Committee of Supply, and afterwards, like all resolutions of that committee, embodied in the Appropriation Act. In the latter case a resolution, of which notice appears on the Order Paper, is moved in Committee of the whole House, and afterwards becomes the basis of a special bill.

In connection with the arrangements for the Civil List, the latter form of procedure is followed, but the royal message is first referred to a select committee. In 1936, the message under the sign manual was received on the 11 March. On the 12th a select committee of twenty-one members was appointed to consider the message. The select committee reported on the 7 April. On the 29th a Committee of the whole House was set up to which His Majesty's message and the report of the select committee were referred,

and on the resolutions (5 May) of the Committee of the whole House, when agreed to by the House on 6 May, the Civil List Bill was founded.

Such demands are presented to both Houses, the form of the message being varied so as to ask for a grant from the House of Commons and concurrence in such grant from the House of Lords.

In the Commons the terms of the royal message govern proceedings on the Civil List, and no amendment can be moved for extending the purposes for which provision is demanded (*n*).

## (2) SIGNIFICATION OF KING'S RECOMMENDATION BY A MINISTER OF THE CROWN

On other occasions, which form the great majority of cases, the King's recommendation is signified by a Minister of the Crown from his place in the House either to a resolution moved in pursuance of S.O. No. 68 appointing a Committee of the whole House for a future day for the purpose of considering the proposed expenditure, or (under S.O. No. 69) to a resolution embodying the proposed expenditure itself.

## 2. METHOD OF APPOINTMENT OF A COMMITTEE OF THE WHOLE HOUSE ON A DEMAND FOR A GRANT

### (1) OLD METHOD IN PURSUANCE OF S.O. NOS. 64 AND 68

A Committee of the whole House to consider a proposal involving expenditure may be appointed, either before the commencement or after the close of public business (see p. 358) by a motion made without notice that "this House will," on a future day, "resolve itself into a committee" to consider the matter specified in the motion. In view of S.O. No. 68, at this stage no statement can be made (*o*). A committee may be appointed in this way either as the reply of the House to a message under the sign manual, or when it is intended to consider a proposal which requires the royal recommendation. In the latter case, if satisfied that the motion will receive the royal recommendation, the Speaker proposes the motion as a question from the chair, and thereupon a Minister of the Crown signifies to the Speaker and to the House, that the motion is recommended by the Crown; and the recommendation, and the name of the Minister who signified it, are recorded upon the Journal of the House. This method which was regularly employed until 1923, has now fallen out of use for the reasons stated on p. 666.

### (2) METHOD PRESCRIBED BY S.O. NO. 69

An alternative procedure is provided by S.O. No. 69 (*p*), whereby, if notice of a resolution authorizing expenditure in connection with a bill

(*n*) C. J. (1935-36) 311, c. 1589-90.

(*o*) Parl. Deb. (1905) 149, c. 1084; H. C. Deb. (1909) 9, c. 254.

(*p*) This standing order was adopted in conjunction with S.O. No. 70 for the purpose of speeding up financial procedure, H. C. Deb. (1919) 112, c. 1294. In its original form it provided for the report stage of the resolution being taken on the same day as the committee.



has been given, the House may, if the recommendation of the Crown is signified thereto, at any time after the notice appears on the paper, resolve itself into a committee to consider the resolution. Thus, if a resolution appears on the notice paper to be considered in Committee of the whole House under this standing order, and a Minister of the Crown signifies the royal recommendation, the Speaker leaves the chair forthwith and the House resolves itself into committee.

### 3. PROCEDURE IN COMMITTEE OF THE WHOLE HOUSE ON EXPENDITURE

In the case of Committees of the whole House appointed in reply to a message under the sign manual, or on the recommendation of the Crown, or to consider resolutions to which the recommendation of the Crown is signified under S.O. No. 69, the Speaker leaves the chair without question put (S.O. No. 16). Procedure in these committees follows in principle the procedure of other Committees of the whole House, but with special rules confining amendments within the scope of the resolution to which the King's recommendation has been signified.

#### SCOPE OF DEBATE ON RESOLUTION

Debate in committee on a financial resolution is confined to the terms of the resolution itself and must not be extended to the related bill (*q*).

#### PROCEDURE ON AMENDMENTS

The approval or the reduction of the expenditure under consideration, or an increase in the stringency of the terms and conditions of the charge thereby created, are the matters specially entrusted to such a committee, and to these objects amendments are directed.

An amendment proposing to substitute for the resolution an argumentative (*r*) justification for the refusal of the demand is out of order, as are also amendments proposed with a view to substituting an alternative scheme to that proposed with the royal recommendation (*s*).

In accordance with the constitutional principle which reserves the initiative in finance to the Crown, the terms of the message under the sign manual or of the resolution recommended by the King for imposing a charge are treated as laying down a maximum charge, which amendments may reduce but may not extend, in respect of the amount of the expenditure, the area of its operation and the objects to which and the conditions under which it applies.

Thus when a committee was considering the resolution, founded on a royal message, for a grant of £1,000 a year to Sir Henry Havelock, an amendment to obtain the continuance of the pension to his son was not permitted. Parl. Deb. (1857-58) 148, c. 1394. See also H. C. Deb. (1919) 120, c. 513, 519.

(*q*) Parl. Deb. (1906) 161, c. 335; H. C. Deb. (1916) 83, c. 1700; *ibid.* (1917-18) 98, c. 1136; *ibid.* 99, c. 423; *ibid.* (1918) 106, c. 1605; *ibid.* (1921) 143, c. 1132; *ibid.* (1938-39) 343, c. 1195.

(*r*) Parl. Deb. (1901) 98, c. 923; H. C. Deb. (1910) 19, c. 1624; *ibid.* (1920) 134, c. 1552; H. C. Deb. (1936-37) 320, c. 1035.

(*s*) H. C. Deb. (1917-18) 98, c. 617.

In committee on a resolution, Depressed Areas [Money], 1934, which included a schedule enumerating the areas eligible for grants, amendments proposing the addition of other areas were disallowed as exceeding the King's recommendation. H. C. Deb. (1934-35) 295, c. 1712.

An amendment to the money resolution in connection with the British Sugar Subsidy Bill, 1935, was ruled out of order on the ground that it proposed conditions for the payment of the grant different from those which had been recommended by the Crown (*ibid.* (1934-35) 303, c. 1296-1300).

In respect of the degree of restriction imposed upon such a Committee of the whole House a difference arises as a result of the two methods of appointment described above.

Under the old method (S.Os. Nos. 64 and 68) the instrument (to use a general term) by which the initiative of the Crown is exercised is either (i) a message under the sign manual, or (ii) the order of reference to a Committee of the whole House—both of which are normally drawn in general terms.

(i) Where a *message under the sign manual* is the occasion for the appointment of a committee, opportunity may exist for the moving of amendments which, though they increase the charge authorized by the particular resolutions moved in the committee itself, do not exceed the terms of the royal message (*t*).

(ii) When the *King's recommendation* is given to a resolution "That this House will on a future day resolve itself into a committee to consider" certain proposals for expenditure, a similar latitude is conceded. When this expenditure comes to be considered in committee the motion to which the King's recommendation has been signified is replaced by one drawn in less general terms which sets out the particular purposes for which money is demanded, the conditions under which it will be expended—perhaps, also, the maximum sum required. As, however, the power of amendment of the committee is not limited by the terms of the resolution which is before it, but by the resolution which has received the King's recommendation, namely the resolution by which it was appointed, it is within its powers to increase the amount, to extend the purposes and to dispense with the limitations of the expenditure actually proposed to it, so long as these changes do not extend the terms of the resolution recommended by the King (*u*).

This important consequence of the procedure under S.Os. Nos. 64 and 68, was stated in rulings from the chair in 1881 and 1891 in relation to amendments moved in committees on bills—a matter in which, incidentally, a change of practice seems to have occurred (see p. 740). It was correctly expressed by the Chairman in relation to the committee proceedings on Unemployment Insurance [Money], 1922, when he allowed an amendment which increased the charge authorized by the resolution before the committee on the ground that it was covered by the widely drafted terms of the resolution with the royal recommendation by which the committee was appointed, H. C. Deb. (1922) 152, c. 1588.

Under the method prescribed by S.O. No. 69, the resolution which has received the King's recommendation is the resolution actually

(*t*) Parl. Deb. (1812) 23, c. 199; Percival ii, 303.

(*u*) Parl. Deb. (1812) 23, c. 199; Perceval ii, 303.

considered by the committee. Accordingly, in this case the committee's power of amendment is strictly limited to reduction of the demand thereby made. This limitation on the power of proposing amendments applies equally to Ministers of the Crown as to unofficial Members. If the Government themselves wish to extend, or to accept amendments extending, the charge thus proposed to a committee, it is necessary to withdraw the resolution and submit another containing the desired modification, as was done in the case of the Coal Mines Bill, 1929-30, and the Agricultural Marketing Bill, 1930-31 (a).

#### REPORTS OF COMMITTEES OF THE WHOLE HOUSE AUTHORIZING EXPENDITURE

A resolution of a Committee of the whole House authorizing expenditure cannot be considered by the House on the day on which it is reported, but is ordered to be considered on a future day (see p. 575). In cases of urgency the House has ordered (upon a motion, of which notice has been given), that the stages in committee and upon report of such a resolution may be taken on the same day (b).

Like other resolutions reported from a Committee of the whole House (see p. 575), money resolutions are read separately from the table; after which amendments may be moved; and then the Speaker proposes the question for agreeing with the resolution or the resolution as amended. Money resolutions are seldom debated on report, since an adequate opportunity for debate has already been provided in committee, and points of detail are more appropriately raised on the clauses and schedules of the related bill (c).

**Re-committal of Resolution.**—When a financial resolution has been reported, it cannot be re-committed, as the committee in reporting it has discharged its functions and ceased to exist. Further, the purpose of re-committing such a resolution, namely, to increase the charge, would probably involve its increase beyond the limits of the royal recommendation.

After report of a resolution relating to Small Landholders (Scotland) [Salaries], the Government wished to re-commit the resolution for the purpose of increasing the grant authorized. The Speaker ruled privately that the order for receiving the report of the resolution should be discharged, and a new resolution be moved in a new committee set up for the purpose on the recommendation of the Crown. C. J. (1911) 298, 330, 333.

Proceedings on consideration of reports of financial resolutions are exempted from the "eleven o'clock" rule (S.O. No. 1 (6)).

**Rules governing amendments on report.**—In view of the practice based on S.O. Nos. 64 and 68, the House, when considering a financial resolution reported from a Committee of the whole House, cannot increase or extend the charge authorized by the committee, even if

(a) C. J. (1929-30) 165, 169. See also *ibid.* (1911) 298, 330, 333; H. C. Deb. (1930-31) 248, c. 1059-1149.

(b) C. J. (1910) 103, 122; *ibid.* (1917-18) 240; *ibid.* (1919) 422.

(c) Parl. Deb. (1901) 98, c. 1206-7.

such charge is more limited in scope than that recommended by the King.

When the question for agreement with the resolution reported by the committee has been agreed to by the House, a bill, if necessary, is ordered to be brought in upon such resolution (see p. 479). Such a resolution is a necessary preliminary either to the introduction of a bill or at least to the consideration by a committee of those provisions of a bill which involve charges.

## C. PROCEDURE ON BILLS SANCTIONING EXPENDITURE

After a charge, having been recommended by the Crown, has been voted as a resolution by a Committee of the whole House and agreed to by the House itself on report, it still remains for it to receive legislative authorization by being embodied in an Act of Parliament.

The relation of a bill to a resolution authorizing a charge is of two kinds.

### 1. BILLS FOUNDED ON MONEY RESOLUTIONS

When the main object of a bill is the creation of a public charge, the bill is, as stated (p. 479), introduced upon a resolution of a Committee of the whole House when agreed to by the House (*d*). This rule is not applicable to Government bills introduced under S.O. No. 64A (see p. 480).

When a bill which, according to this rule, should have been founded upon a money resolution, has been presented or submitted on a motion for leave under S.O. No. 10, the Speaker has declined to propose the necessary question, and the bill has not been proceeded with (*e*).

When a bill is introduced on a money resolution, the resolution stands for its "order of leave" (see p. 489) and all the provisions of the bill, not merely those which involve charges, must be covered by the resolution. Such a bill cannot constitutionally originate in the House of Lords (see p. 766). Bills of this character have long been called "money bills," but this term received a somewhat different technical meaning under s. 1 of the Parliament Act, 1911. The difference between the two classes of money bill is explained in Chapter XXVIII (p. 779).

### 2. BILLS WITH MONEY CLAUSES

If the charge created by a bill is a subsidiary feature resulting from the provisions it contains, the royal recommendation and preliminary committee are not needed before the introduction of the bill, but, before the clauses and provisions creating such charges can be considered by the committee on the bill, a resolution sanctioning them must be passed in the manner stated in the preceding section (*f*). In the presentation copies of the bill, the clauses and provisions which create these charges are printed in italics to mark the fact that they do not unconditionally form part of the bill and that no question can be proposed thereon, unless vitality has been imparted to them by a financial resolution agreed to in

(*d*) C. J. (1800) 396; *ibid.* (1843) 167; *ibid.* (1846) 615; *ibid.* (1849) 412; *ibid.* (1857-58) 31; *ibid.* (1892) 67; Parl. Deb. (1892) 1, c. 315.

(*e*) H. C. Deb. (1912) 35, c. 1495; *ibid.* (1928-29) 226, c. 216. See also War Pensions (Amendment) Bill, 1931.

(*f*) C. J. (1883) 234.

Committee of the whole House and on report (g). For bills introduced in the Lords see p. 767-8.

This rule applies specifically to the committee stage of the bill. On the second reading the House is not precluded from discussing the clauses printed in italics (h).

The words printed in italics must be "covered" by the relevant money resolution, *i.e.* the charge they authorize may not be larger in amount, or more extensive in purpose than the charge recommended by the Crown. If they are found not to be so covered, they should not be considered in committee until a further resolution covering the deficiency has passed through its stages. Alternatively, the italicized words must themselves be amended so as to be brought within the terms of the resolution (i).

On the other hand it has been held that the money resolution must not be more detailed than the terms of the corresponding clause in the bill as that might unduly restrict the power to move amendments (k).

Those clauses of a bill, which are not italicized, may be considered in committee before the resolution "covering" the italicized clause or clauses has been reported and agreed to (l).

This rule is enforced in committee by the refusal of the chairman to propose the question on a clause, schedule or amendment, involving a charge, which is not completely covered by the money resolution related to the bill (m). If a question has been proposed on an amendment, which in the course of debate is shown to involve a charge not covered by the financial resolution, it is the duty of the Chair to intervene and rule it out of order (n). Amendments of this character which have been made in the House by inadvertence have been cancelled (o); and a bill has been re-committed to a select committee (p), and to a standing committee (q), in order that the committee might rectify an irregularity of this kind.

### QUESTION WHETHER THE MAIN PURPOSE OF A BILL IS THE IMPOSITION OF A CHARGE

In relation to the bill authorizing it, a charge varies from being the sole purpose of a "money" bill to covering minor provisions of a bill which only incidentally involve expenditure. For example, the sole purpose of

(g) Parl. Deb. (1865) 177, c. 1308; *ibid.* (1880) 252, c. 196, 533, etc.

(h) Parl. Deb. (1894) 24, c. 185.

(i) Local Government (Scotland) Bill, 1928-29, clause 70; Unemployment Insurance (No. 2) Bill, 1929-30. In the latter case, to comply with the spirit of the rule, the necessary amendment was made at the beginning of the italicized words in clause 12 (2).

(k) Consumers' Council Bill, 1929-30, private ruling.

(l) Parl. Deb. (1897) 49, c. 1151.

(m) C. J. (1857) 393; *ibid.* (1882) 345; *ibid.* (1883) 234; Parl. Deb. (1854-55) 137, c. 1897; *ibid.* (1861) 164, c. 173; *ibid.* (1905) 149, c. 911; *ibid.* (1906) 161, c. 854; *ibid.* (1907) 180, c. 825; H. C. Deb. (1917-18) 92, c. 63; *ibid.* (1919) 114, c. 2396; *ibid.* (1924-25) 181, c. 2159, etc.

(n) C. J. (1916) 108; H. C. Deb. (1916) 83, c. 362; C. J. (1918) 215; H. C. Deb. (1918) 110, c. 237; C. J. (1919) 157; H. C. Deb. (1919) 116, c. 915; C. J. (1920) 280; H. C. Deb. (1920) 131, c. 1900, etc.

(o) C. J. (1856) 370.

(p) C. J. (1843) 487.

(q) C. J. (1907) 196; Parl. Deb. (1907) 174, c. 1068; C. J. (1927) 105, 119; H. C. Deb. (1927) 204, c. 2033; C. J. (1929-30) 387; H. C. Deb. (1929-30) 239, c. 2546. The necessary resolution was agreed to and the re-committed bill reported without amendment, C. J. (1929-30) 399, 411.

a bill guaranteeing a loan may be the imposition of a charge upon the Consolidated Fund. At the other end of the scale, a bill may contain purely incidental charges, such as administrative expenses incurred by an existing department in the performance of new duties. In the former case the bill would be introduced on a money resolution. In the latter case it would be presented in the ordinary way, and the provisions involving expenditure would be printed in italics in the presentation copy of the bill. Between these extreme types of cases, where the application of the rule is obvious, there is a large number of bills which are more difficult to classify. These are bills the objects of which are not financial in the narrow sense but are unattainable without expenditure out of public funds. Such a bill is seldom simple in character. (1) It may make provision for more than one object. In such a case when the principal object has been distinguished as the one involving a charge, it has to be decided whether the subsidiary object is of a substantive or contingent character, *i.e.* whether, if the main object were eliminated, the subsidiary object would fall with it or would stand by itself. If it is decided that the subsidiary object would fall, the bill is classified as a bill the *main* purpose of which involves a charge and, therefore, one which must be founded on a financial resolution. On the other hand, if the subsidiary object stands by itself, the bill can be presented, with the provisions involving a charge printed in italics (r). (2) Although the principal purpose of a bill clearly involves a charge, yet it may require machinery to establish and administer it—for instance, the creation of a new board or department—which is relatively so important as to be considered substantive. The “main purpose” of such a bill is held not to involve a charge. Thus the National Insurance Bill, 1911, the Unemployment Insurance Bill, 1920 and the Widows’, Orphans’ and Old Age Contributory Pensions Bill, 1925, were not introduced on money resolutions, because their objects required the creation of new administrative bodies and were financed by individual contributions as well as by the State, although in each case the scheme was unworkable without the State contribution. On the other hand, the Old Age Pensions Bill, 1908, was introduced on a money resolution because the machinery it required was comparatively simple, and it was financed entirely out of the Exchequer.

Although this distinction in procedure has lost much of its practical importance since the passage of S.O. No. 64A (s), which permits a bill (other than a bill which is required to originate in committee of Ways and Means) the main object of which is the creation of a public charge to be *presented* by a Minister of the Crown, it has still to be maintained in the case of bills presented by unofficial Members.

The following are examples of bills classified into one or other of these two financial classes :

#### I. BILLS REQUIRING TO BE FOUNDED ON MONEY RESOLUTIONS

**Where the main purpose is the imposition of a charge upon public funds.**

(r) If the main purpose of a bill involves expenditure, while the subsidiary provisions, which do not involve expenditure, are substantive but totally disconnected with the main purpose of the bill, the Speaker has ruled that they should be embodied in a separate bill. Private ruling 13 March 1934 (Decision 2058).

(s) C. J. (1937-38) 85.

*Rating (Scotland) Amendment Bill*, 1928, which amended the Rating (Scotland) Act, 1926, so as to increase the Exchequer grant to Scotland under the Agricultural Rates Act, 1923.

*Superannuation Bill*, 1928-29, which proposed to amend the Superannuation Acts by allowing years of service abroad to count for pension. The Speaker refused to propose the question for leave to introduce this bill, as its sole purpose was to increase the charge in respect of civil service pensions, and it should therefore have been founded on a money resolution. H. C. Deb. (1928-29) 226, c. 216-19.

*Home and Empire Settlement Bill*, 1933, which proposed to extend to settlement at home state assistance authorized by the Empire Settlement Act, 1922, for settlement overseas. The Speaker ruled privately that this bill should have been founded on a money resolution (a similar bill of the previous session had been presented and received a second reading).

An exception to the rule, of which the above bills are examples, is afforded by the *National Health Insurance Bill*, 1919, the purpose of which was to raise the limit of remuneration for exception from insurance, thus increasing the number of persons in respect of whom state contribution is payable and consequently the charge upon public funds. In spite of this, the bill was not founded on a money resolution, probably because, like the Act it amended (which, itself, was not founded on a resolution), the increased cost was partly covered by individual contributions.

*Labourers' Home Emfranchisement (Ireland) Bills*, 1912 (and 1913), which proposed to transfer two-thirds of the liability of Irish district councils to the Irish Land Commission and thus to place them on the Estimates. This bill was ruled out on the second reading as it had not been founded on a money resolution C. J. (1912) 61; H. C. Deb. (1912) 35, c. 1495.

*Overseas Trade (Insurance against abnormal Risks) Bill*, 1919, the purpose of which was to authorize the Board of Trade to undertake insurance involving abnormal risks. The bill had been presented in the ordinary way but did not proceed. A bill to carry out similar purposes was in the following session introduced on a money resolution.

*Telephone Transfer Bill*, 1911, the main purpose of which was to provide finance for the transfer of telephones from a Company to the Post Office. It was founded on a money resolution.

*Cunard Insurance (Agreement) Bill*, 1930-31, to authorize the Board of Trade to make an agreement for state insurance of a ship.

*Newfoundland Bill*, 1933-34, to make provision for the assumption by the Government of the United Kingdom of responsibility for the finances of Newfoundland, and for the suspension of the Constitution. Although the second provision appeared to be substantive, it was decided that it was really dependent on the assumption of financial responsibility, and accordingly the bill was founded on a money resolution. (This case may be compared with that of the Development and Road Improvement Funds Bill, 1909, mentioned below.)

## 2. BILLS WITH ITALICIZED CLAUSES

Where, though a charge is essential, other purposes of a bill are substantive.

*Disabled Men (Facilities for Employment) Bill*, 1919, the purpose of which was to facilitate the employment of men disabled in the war by relieving their employers of the extra cost of insurance. The proposed arrangements depended upon the increased cost being borne by public funds. The bill was, however, presented without being founded on a money resolution.

*Empire Settlement Bill*, 1922, to authorize the Secretary of State to co-operate with Dominions, etc. in schemes for settlement overseas. Here the liability imposed on public funds was essential to the scheme, but it was not held to be its main purpose.

Other examples of this type of bill are the Housing Bill, 1914, and the Housing (No. 2) Bill, 1919.

The decisions in these cases were no doubt helped by the fact that the bills were so drafted as to separate the financial provisions from the other provisions, which formed complete schemes in themselves requiring only to be vitalized by the addition of a charge.

*Development and Road Improvement Funds Bill*, 1909, to promote the economic development of the United Kingdom and the improvement of roads therein. This bill was divided into two main parts. Part I by itself would have been a bill requiring to be founded on a money resolution. The main purpose, however, of Part II was to set up a new authority, the Road Board, and these provisions, being of substantive importance, were sufficient to take the whole bill out of the category of money bills.

## PROCEDURE ON STAGES OF BILLS FOUNDED ON MONEY RESOLUTIONS

The ordinary rules of order, applicable to bills generally, such as the rules requiring relevancy to the subject matter of a bill, apply to debate on the stages of bills imposing charges.

Not more than one stage of a bill founded on a resolution of a Committee of the whole House appointed with the King's recommendation can be taken on the same day, except by order of the House made upon a motion of which notice has been given (*t*) (see p. 659).

### AMENDMENTS IN COMMITTEE ON BILLS AUTHORIZING CHARGES

The general rules governing the admissibility of amendments in committee on such bills are those set out in the chapter on Public Bills, pp. 520, 526. It is, however, necessary to consider the additional restriction resulting from the relation between a bill and its financial resolution, the effect of which is, as stated above, that no amendment may be moved in committee on a bill which would increase the charge beyond the limits authorized by the relevant money resolution, as recommended by the Crown and agreed to in committee and on report. Every amendment offered to a bill containing a charge is accordingly scrutinized in relation to the terms of such a resolution in order to make sure that it does not in any way exceed the limits thus imposed. On the other hand, if the charge contained in the bill before the committee in any way falls short of the terms of the resolution recommended by the King (or initiated on a message from the King) and agreed to in committee and on report, it may be increased in amount or extended in area up to that limit (*u*).

(*t*) C. J. (1910) 304, etc.; *ibid.* (1911) 106, etc.; *ibid.* (1914) 431, etc.; *ibid.* (1914-16) 28; *ibid.* (1916) 140, 259; *ibid.* (1918) 247; *ibid.* (1919) 248, 422; *ibid.* (1921) 361; *ibid.* (1924) 333; *ibid.* (1929-30) 47. See also H. C. Deb. (1916) 84, c. 564. Upon such a motion the bill in question cannot be discussed, *ibid.* (1918) 110, c. 3119.

(*u*) Civil List Bill, 1936, H. C. Deb. (1935-6) 312, c. 117; C. J. (1935-6) 221.



It is important to observe that, according to recently established procedure, the standard with which amendments have to conform, in order not to exceed the authorized charge, is the related money resolution, *as agreed to by the House*. Formerly this appears not to have been the case. In two rulings from the chair, in 1881 and 1891, the standard of comparison adopted was that of the resolution *as recommended by the Crown*; and the same latitude was permitted in committee on the bill as that, described on p. 733, which would still be permitted in committee on the financial resolution. Parl. Deb. (1881) 263, c. 53; *ibid.* (1891) 354, c. 1898. The modern practice was expressed by the Chairman in the case cited on p. 733. H. C. Deb. (1922) 152, c. 1588. The soundness of the argument underlying the change in practice might, at first sight, appear open to question. The constitutional principle, it might be thought, was not infringed by any amendment remaining within the limits of the charge *initiated* on the recommendation of the Crown. It should be remembered, however, that the original provisions of a bill must be covered by the terms of a money resolution as agreed to by the House. It would be a strange anomaly to extend a greater latitude to amendments than to the original provisions of a bill, by allowing the former, while forbidding the latter, to exceed the terms of the resolution agreed to by the House up to the limits of the resolution recommended by the Crown. The likelihood of a difference between the terms of the initial resolution and that agreed to by the House has been reduced by the general adoption of the procedure under S.O. No. 69 (see p. 659), but the possibility remains that the charge authorized by a money resolution might be reduced by amendment either in committee on the resolution or by the House; if so it would be the reduced charge to which both the original provisions of a bill and amendments would have to conform.

As stated on p. 730, in committee on a bill which repeals or reduces a continuing charge amendments are allowed which are designed to restore the charge in part or in whole (*a*). Though such an amendment authorizes a charge greater than that contained in the original provisions of the bill, it does not increase the charge in relation to the true standard of reference, which is, in this case, the existing law.

This simple rule is, however, liable to be complicated in committee on a bill especially (though the same difficulty might arise on the report stage of a financial resolution or bill) through the effect of a financial resolution. If the abolition or reduction of an existing charge formed part of a connected scheme which, as a whole, imposed a charge and, therefore, had received the royal recommendation, it would have to be considered whether an amendment in committee or on report of the related bill, designed to restore in part or in whole the existing level of the charge, should be treated as merely tending to restore an existing charge, or should not rather be treated as removing a limiting condition from a scheme, which, as a whole, imposed a charge—and, therefore, as exceeding the terms of the motion recommended by the Crown.

As explained above (p. 718), it is unnecessary to set out the various ways in which amendments may impose fresh charges. The different kinds of expenditure which are regarded as charges have been tabulated in pp. 718-22. The rules there stated are generally the same for amendments as they are for bills, *with the substitution of the relevant money resolution for the existing law* as the standard in relation to which the increase of a charge is ascertained. Reference should accordingly be made to

(a) Government of India Bill, 1935, H. C. Deb. (1934-35) 302, c. 531-32, 534.

the classification of charges contained in pp. 718-22, particularly classes 7, 8, 9 and 10.

In view of the way in which the terms of a money resolution limit the scope and extent of the charging provisions of a bill, the Speaker has had occasion to deprecate an excessive amount of detail in the drafting of such resolutions as tending to restrict unduly the power of private Members to propose amendments (b).

The view of the Government on the proper practice in this matter has been laid down by a Treasury circular, communicated to the House on 9 November 1937, and accepted by the Speaker as conforming to the legitimate desires of the House (c) (see p. 666).

**Restrictive effect of terms of money resolution.**—A few examples may be given to show the restrictive effect of the terms of a money resolution, strictly interpreted and applied as they are by the Chair, upon the moving of amendments to the italicized clauses of a bill. These might be multiplied, but it is difficult to find instances which can be stated briefly. Also amendments involving points of order of this kind are frequently ruled upon privately, and cannot, therefore, be made more intelligible by reference to the reports of debates.

The Colonial Development Bill, 1929, and the related financial resolution authorized the Treasury "to make advances either by way of grant or by way of loan." An amendment which proposed to allow "guarantees" also to be given was ruled out of order as exceeding the terms of the resolution, H. C. Deb. (1929-30) 230, c. 681-83. The Coal Mines Bill, 1930, and the related resolution directed that certain charges should be repaid to the Board of Trade by the owners of coal mines. The resolution also contained general words authorizing the payment by the Board of Trade "of such other expenses as may be required to be defrayed for the purposes of the said Act." After drawing attention to these words, a Member sought to move an amendment whereby the charges which might be incurred under the Bill could be met out of public money, but the Chairman ruled that the general words covering the payment of expenses in the Bill did not override the specific directions relating to charges in the Financial Resolution, and that the amendment was therefore out of order. H. C. Deb. (1929-30) 235, c. 2141.

**Application of rule to series of amendments.**—In committee on a bill, and also on report, a difficulty sometimes arises for the Chair in dealing with an amendment, which by itself increases the charge contained in a bill, but which forms part of a connected group of amendments which, taken together, have the effect of reducing the charge. In such a case it is the general rule to consider the effect of each amendment by itself, as there must always be the possibility that the acceptance by the House or committee of an amendment increasing a charge may be followed by the rejection of other amendments forming part of the same scheme which on the whole reduces the charge. There are two possible exceptions to this rule; (1) if the reducing amendments are first agreed to, then the Chair has allowed the increasing amendments of the same group to be moved, provided, of course, that the group, as a whole, effects a reduction;

(b) H. C. Deb. (1934-35) 295, c. 1236

(c) H. C. Deb. (1937-38) 328, c. 1593-1600; *ibid.* (1939-40) 357, c. 1193.

(2) if the amendments, forming a group which, taken as a whole, reduces a charge, are so closely inter-related that the acceptance of one amendment would be meaningless or ineffective without the acceptance of the others, the Chair has allowed the first of the group to be moved with a view to the consideration of the whole group, even though the tendency of the first amendment was in the direction of increasing the charge (*d*).

#### AMENDMENTS ON REPORT OF BILLS AUTHORIZING CHARGES

On consideration of a bill, no amendment can be moved which proposes to increase any charge beyond the limits accepted by the committee which has reported the bill. If the committee has reduced the charge below what was authorized by the financial resolution and below the provisions of the bill as read a second time, it is not in order on report to propose the omission of such a reduction. This rule has been maintained even when the committee reporting the bill has been a standing committee and not a committee of the whole House (*e*).

On the consideration stage, however, amendments proposing to restore an existing charge, reduced by the bill, to the level authorized by law are in order. In considering such an amendment, the House is not bound by any reduction which the committee on the bill may have accepted, but can move freely within the limits laid down for the charge by law.

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(*d*) H. C. Deb. (1939-40) 364, c. 1037.

(*e*) Town and Country Planning Bill, H. C. Deb. (1931-32) 266, c. 1490-96

## CHAPTER XXVII

### WAYS AND MEANS

This chapter gives an account of the procedure in considering ways and means—in other words, the provision of revenue to meet national expenditure. Ways and means are, of course, principally provided by the imposition of taxation, but also by the raising of loans and by provision made as occasion arises for the payment of sums of money into the Exchequer. These matters are dealt with by a common procedure, the principal feature of which is preliminary consideration by the Committee of Ways and Means in its taxing capacity (see p. 657).

The most comprehensive term for the matters dealt with under the procedure explained in this chapter is "ways and means." The term "charges upon the people" is not quite an equivalent, for it includes charges upon local rates, which are not dealt with under this procedure, and excludes the payment of non-tax revenue into the Exchequer, which is so dealt with. On the other hand, "ways and means" also covers the issue of money from the Exchequer to make good votes of supply—the second of the functions of the Committee of Ways and Means (referred to in Chapter XXIV, p. 657). As there is no single precise term available, in this chapter both terms will be used as roughly equivalent, subject to the necessary modifications to which attention has just been drawn.

#### APPLICATION TO WAYS AND MEANS OF THE GENERAL RULES OF FINANCIAL PROCEDURE

Before classifying in greater detail the various matters which are treated as ways and means—and also those which, though *prima facie* of the same kind, are not so treated—it will be convenient to show how the general rules governing financial procedure are modified in their application to ways and means.

1. The legislative authorization, required by Rule 1 (see p. 650), for ways and means is given principally by the annual Finance Bill, but also by special bills which (or the ways and means provisions in which) must originate in the House of Commons.

2. The proof, required by Rule 2 (see p. 653), of the exercise of the Crown's initiative is not given expressly, but is, owing (as in the case of supply) to historical causes, implied in the nature of the initiatory proceedings.

3. The appropriate preliminary committee, required by Rule 3 (see p. 655), is the Committee of Ways and Means in its main capacity—that of raising revenue.

4. The intervals between stages, prescribed by Rule 4 (see p. 659),

are normally obligatory both for the stages of the preliminary resolutions and for the stages of the authorizing bills.

#### ARRANGEMENT OF CHAPTER

Following the order of the previous chapters the material of this chapter will be arranged under three main heads :

- A. The varieties of matters which fall within the scope of ways and means.
- B. The constitution and procedure of the Committee of Ways and Means.
- C. The procedure in considering the Finance Bill and other bills which authorize ways and means.

#### A. THE SCOPE OF WAYS AND MEANS

According to modern practice the only form of proceeding by which ways and means can be initiated is a resolution moved in committee.

For historical reasons, referred to on p. 654, a ways and means resolution is not recommended from the Crown, but it can only be moved by a Minister of the Crown (*a*) and, once moved, it has the same limiting effect upon amendments relating to "charges upon the people" as a resolution recommended by the Crown has upon amendments relating to "charges upon public funds," whether such amendments are offered by unofficial Members or by Ministers. This effect is explained on pp. 667-8.

**Instructions.**—An instruction is not used for the purpose of ways and means as an originating motion, but only as a formal link between a resolution agreed to by the House on report from the Committee of Ways and Means, and a bill already in committee, usually in order to cover amendments which require to be authorized by such a resolution (see p. 762). The effect of requiring for the initiation of ways and means a resolution moved by a Minister in committee has been to rule out of order instructions for the purpose of initiating charges offered by unofficial Members on first going into committee on the Finance Bill (*b*) and other bills imposing taxation.

#### TESTS FOR DETERMINING WHETHER MATTERS INVOLVE CHARGES UPON THE PEOPLE

Matters which are covered by the term "charges upon the people" may be briefly summarized as (1) the imposition of taxation, including the increase in rate or extension in incidence of existing taxation, (2) the repeal or reduction of existing alleviations of taxation such as exemptions or drawbacks, (3) the delegation of taxing powers within the United Kingdom, (4) the granting of borrowing powers and (5) provision for the payment into the Exchequer of receipts which do not arise from taxation.

(*a*) A motion for a Committee of the whole House for the purpose of extending the probate duty offered by an unofficial Member has been disallowed, *Parl. Deb.* (1844) 73, c. 1052.

(*b*) *Parl. Deb.* (1894) 24, c. 1218, *ibid.* (1901) 95, c. 755.

Matters of such kinds require to be authorized by the procedure outlined on p. 751, whether they are original provisions in bills or are proposed by way of amendment to bills. Instances to be given below will be drawn from both bills and amendments. The question whether a particular matter involves a charge upon the people is more easily answered than the similar question in respect of charges upon public funds (see pp. 716-18). But, as doubtful cases arise in practice, it will be convenient to mention briefly the tests which are applied in order to decide this question. Detailed cases will be set out in a separate section (see below). Obvious as it may seem, it is yet necessary, since confusion has arisen about amendments on this point, to say that the proposal of an alleviation of taxation, such as a drawback, does not involve a charge and does not require the special procedure appropriate to charges. Charges upon the people are imposed generally and intended to be used for general purposes. Thus levies upon an industry the proceeds of which are intended to form a fund for the purposes of that industry are not charges. Nor are payments for services rendered by departments of state, imposed in the form of licences, regarded as charges. Impositions are not charges unless the proceeds are payable into the Exchequer. This connotation excludes local rates and loans, and even burdens imposed by Parliament the proceeds of which are payable to local funds. Provisions delegating taxing powers to dominion and colonial parliaments do not involve charges. Finally, though the exclusion of tax provisions from the category of charges upon the people by reason of the existence of statutory powers already "covering" them (see p. 749) is unlikely, yet instances have occurred of loan provisions being excluded for that reason.

## MATTERS INITIATED BY WAYS AND MEANS RESOLUTIONS

The following are examples of matters which require to be initiated in the form of a resolution moved in Committee of Ways and Means (c) by a Minister of the Crown.

### I. TAXATION

A ways and means resolution is a necessary preliminary to the imposition of a new tax, the continuation of an expiring tax, an increase in the rate of an existing tax, or an extension of the incidence of a tax so as to include persons not already payers. According to present practice it is immaterial whether the tax is solely intended to provide revenue for the service of the year, or whether its primary purpose is to regulate imports (see p. 667).

**New taxation.**—Out of the numerous possible cases mention may be made of the new import duties of 1932.

New taxes and duties receive special treatment in two respects : (i) They do not come into force under the *Provisional Collection of Taxes Act, 1913*, immediately on being voted in Committee of Ways and Means (see p. 756) ; (ii) New duties on separate commodities cannot be included in the same ways and means resolution (see p. 751).

(c) In view of the older practice explained in pp 657-9, some of the matters illustrated in the examples given in the following pages were initiated, not (as would now be the practice) in Committee of Ways and Means, but in Committees of the whole House with the King's recommendation.

**Continuation of an expiring tax.**—Most taxes are imposed indefinitely or for a period. But for the purpose of maintaining parliamentary control, the tea duty was until 1929, and income tax still is, continued from year to year by the Finance Bill, whether in fact the rate is changed or not.

**Re-imposition of a repealed tax.**—The revival of a repealed or expired tax is treated in the same way as the imposition of a new tax; and consequently the resolution imposing it does not become effective under the Provisional Collection of Taxes Act and cannot include several separate commodities.

The "new duties" imposed by the Finance (No. 2) Act, 1915, allowed to lapse in 1924, were re-imposed by the Finance Act, 1925, C. J. (1924-5), 176. Similarly the duty on tea, abolished in 1929, C. J. (1928-9), 211, was re-imposed in 1932, C. J. (1931-2) 156.

**Increase in the rate of an existing tax.**—The increase of the rate of a permanent tax must be initiated by a resolution for that purpose in Committee of Ways and Means. The resolution may increase a tax indefinitely (*d*) or for a limited period. The extension of the duration of a tax during its period of currency would require a ways and means resolution.

The alteration of *stamp duties, effected by private bills*, which might result in the payment of increased duty in certain cases, is regarded as a charge which requires authorization by resolution. This is initiated not in Committee of Ways and Means but in a specially appointed Committee of the whole House. See p. 720.

**Extension of incidence of tax.**—A ways and means resolution is required for extending a tax to new classes of tax payers (*e*) or to commodities previously free of duty (*f*).

## 2. REPEAL OR REDUCTION OF ALLEVIATIONS OF TAXATION

Ways and Means resolutions have been required in the following cases :

Repeal of exemption from tax.—

In the Crown Lands (No. 2) Bill, 1927 the repeal of an exemption from stamp duty (*g*).

Repeal of an existing drawback.—

On the export of sugar in the Sugar Duties and Drawbacks Bill, 1865 (*h*).

## 3. DELEGATION OF TAXING POWERS WITHIN THE UNITED KINGDOM

A proposal in an amendment to the Finance Bill to delegate powers of taxation to an authority other than the Committee of Ways and Means has been ruled out of order (*i*). But such delegation has been effected in several recent cases by proposals in bills founded on ways and means

(*d*) Tobacco Duties 1927, C. J. (1927) 114; Hydrocarbon Oils, C. J. (1930-31) 411.

(*e*) Finance No. 2, 1931, C. J. (1930-31) 415; Finance 1926, C. J. (1926) 139.

(*f*) Import Duties 1932, C. J. (1931-32) 70-71.

(*g*) C. J. (1927) 105.

(*h*) C. J. (1865) 313, 330.

(*i*) H. C. Deb. (1917-18), 95, c. 828.

resolutions (*k*). As to the power of the House of Commons to delegate its function of taxation to another body, see Mr. Speaker's remarks in the case of the Imports and Exports Regulation Bill, 1919 (*l*), and the Abnormal Importations (Customs Duties) Bill, 1931 (*m*).

#### 4. GRANT OF BORROWING POWERS

Provisions in a bill authorizing the Crown to raise money by the issue of a loan require to be based on a ways and means resolution (*n*).

Temporary borrowing by ways and means advances and Treasury bills is authorized by permanent statutes (*o*).

#### 5. PAYMENTS INTO THE EXCHEQUER

Taxes are payable into the Exchequer under general statutes. When receipts accrue from sources other than taxation, authority for their payment into the Exchequer is properly given by the Committee of Ways and Means, as the body which grants aids to the Crown.

Examples of ways and means resolutions for this purpose are: Navy, Army and Air Force Insurance Fund, 1926, and Bankruptcy and Companies Winding-up (Fees) Account, 1926, C. J. (1926) 112; Unclaimed Dividends, 1928, and Fines under Road Transport Lighting Act, 1928, *ibid.* (1928) 223.

When such receipts are minor matters incidental to the exercise of functions which involve expenditure, authority for their payment into the Exchequer usually, for the sake of convenience, forms part of the resolution authorizing expenditure, which is moved in committee of the whole House.

Examples of authority given in resolutions moved in Committee of the whole House with the King's recommendation are: Agricultural Credits (Scotland), 1929, C. J. (1928-29) 38; Naval Prize (Transfer of Fund), 1928, *ibid.* (1928) 265; Agricultural Credits, 1928, *ibid.* (1928) 152; Road Traffic, 1930, *ibid.* (1929-30) 203.

### MATTERS, AKIN TO CHARGES UPON THE PEOPLE, NOT INITIATED BY WAYS AND MEANS RESOLUTIONS

#### 1. LOCAL RECEIPTS

The rules of financial procedure do not apply to the receipts of local authorities, when they form the subject of legislation, unless, of course, they are in the form of grants from the Exchequer.

**Local Loans.**—Provisions in bills dealing with local loans are not initiated in committee of Ways and Means.

**Taxes payable to local funds.**—No ways and means resolution is necessary for these.

(*k*) Abnormal Importations (Customs Duties) Bill, 1931, C. J. (1931-32) 28.; Import Duties Bill, 1932, C. J. (1931-32) 74; Safeguarding of Industries Act, 1921, s. 2; C. J. (1921) 145.

(*l*) H. C. Deb. (1919) 122, c. 213.

(*m*) H. C. Deb. (1931-32) 259, c. 719 *et seq.*

(*n*) War Loan Bill, 1917, C. J. (1917-18) 193; *ibid.* 1918, C. J. (1918) 153; Defence Loans Bill, 1937, C. J. (1936-37) 130; National Loans Bill, C. J. (1942-43) 89.

(*o*) Exchequer and Treasury Bills Acts, 1866 and 1877.



The Dogs Regulation (Ireland) Bill, 1919, raised the tax on dogs from 2s. to 6s. without a ways and means resolution, as the tax was payable under the Act of 1865 not to the Exchequer, but to the County Registrars in Ireland.

The imposition by quarter sessions of payments for monopoly value authorized by the Licensing Bill, 1904, was not initiated by a ways and means resolution, since it was payable into county funds. When this imposition was made payable into the Exchequer by the Finance Bill, 1908, cl. 6, a resolution was required.

## 2. ALLEVIATION OF TAXATION

Provisions for the alleviation of taxation are not subject to the rules of financial procedure. The repeal or reduction of a tax, for instance, by the Finance Bill, is sometimes preceded by a specific ways and means resolution (*p*). But this procedure is neither necessary nor usual. Thus provisions for the repeal or reduction of taxation, the granting or extension of exemptions, the creation or increase of drawbacks, etc., can be presented in bills or inserted by amendment without preliminary sanction of the Committee of Ways and Means (*q*). The effect of this principle on the power to move amendments to bills will be stated on p. 761.

It must be remembered, however, that, to escape the rules of financial procedure, a scheme for the alleviation of taxation must not include any incidental increase of the burden upon any tax-payer, however indirect or relatively insignificant that increase may be (*r*).

Matters which have been treated as instances of alleviation of taxation are : provision for the remission of land tax in the Post Office (Sites) Act, 1927, s. 10 ; provision in the Finance Act, 1914, s. 14, for the repayment to individual payers of sums paid in respect of settlement estate duty ; provision in the Revenue Act, 1911, s. 8 (4), for the repayment of excess payments in respect of licence duties ; provision in the Finance Act, 1920, s. 57, for the repayment of sums paid in previous years in respect of land values duty.

## 3. LEVIES UPON AN INDUSTRY FOR ITS OWN PURPOSES

Levies upon employers in a particular industry for the purpose of forming a fund used to finance activities beneficial to the industry are not regarded as charges. Provisions in the following bills have been treated as falling within this rule :—

(*p*) Duties on cotton, wool, etc., C. J. (1765-66) 812 ; duties on materials for making glass, *ibid.* (1776-78) 508 ; additional house and window duty repealed, and income tax imposed, *ibid.* (1798-99) 56 ; Irish beer duties repealed, *ibid.* (1806-7) 710 ; paper duties repealed, *ibid.* (1861) 195 ; customs duties on antiques, *ibid.* (1926) 137 ; on tea, *ibid.* (1928-9) 211. An amendment to repeal a duty proposed on consideration on report of a resolution of the Committee of Ways and Means imposing the duty at a reduced rate has been refused by the Speaker, H. C. Deb. (1922) 153, c. 1842.

(*q*) Repeal of stamp duty on admission to corporations, and repeal of 4½ per cent. duties, C. J. (1837-38) 483, 822 ; repeal of duty on bricks, *ibid.* (1839) 132 ; Penny Postage Bill, *ibid.* (1840) 542 ; Stamp Duty on Policies of Insurance, *ibid.* (1844) 250 ; Paper Duty Repeal Bill, *ibid.* (1860) 111 ; abolition of certain duties in the Finance Bill, 1930, (cl. 4 and 5). See also the Speaker's ruling in regard to the remission of land tax under the Agricultural Rates, Congested Districts, etc. (Scotland) Bill, Parl. Deb. (1896) 42, c. 1324.

(*r*) Thus on 12 April, 1916, the chairman, in allowing an amendment to be moved in committee on the Finance (New Duties) Bill with the object of altering the method of levying a new tax, insisted that the amendment should be so framed as not to increase the charge that would be imposed on any individual payer of the tax, H. C. Deb. (1916) 81 c. 1812.

Coal Mines Control Agreement (Confirmation) Bill, 1917, H. C. Deb. (1917) 98, c. 2400. Coal Industry (Emergency) Bill, 1919, H. C. Deb. (1919) 122, c. 1667. Ministry of Mines Bill, 1920, H. C. Deb. (1920) 131, c. 653-655. See also the loan to provide a fund for the compensation of unnecessary houses under the Licensing Bill, 1904.

It may sometimes be difficult to define the limits of an industry, as in the Wheat Bill, 1932 (which was treated as within this rule) under which levies upon importers of flour formed a fund for making payments to growers of wheat.

The Munitions of War Bill, 1914-16 (cl. 4) which levied the profits of controlled establishments beyond the amount legally divisible, may have been regarded as an instance of this rule, H. C. Deb. (1914-16) 72, c. 2002. But it seems to have been overlooked that these profits were paid into the Exchequer and retained as revenue.

#### 4. CHARGES IMPOSED FOR SERVICES RENDERED BY DEPARTMENTS

Payments which are intended to cover the expenses of government departments in performing services for the public or sections of the public are not regarded as charges (s). Such payments may take the form of fees or licences.

This rule is not allowed to legitimize charges so disproportionate to the cost of the services rendered as to amount to taxation.

The Speaker has ruled that, in the case of a licence granted by a government department, the payment charged for the issue of the licence, if it is a small fee of an administrative character, should not be considered a charge upon the subject necessitating a resolution of a Committee of the whole House, but that if the fee charged did more than this, a ways and means resolution would be necessary, H. C. Deb. (1917-18) 100, c. 164; *ibid.* (1920) 136, c. 1000. (For cases of fees imposed without a money resolution, see Electric Lighting Bill, 1882, Registration of Firms Bill, 1916, Non-Ferrous Metal Industry Bill, 1917, Dyestuffs (Import Regulation) Bill, 1920, and Fees (Increase) Bill, 1923.)

In view of this ruling a ways and means resolution has been regarded as necessary in any case where the charge for a fee or licence has been unduly high or without a defined limit, see Road and Rail Traffic Bill, 1932-33, C. J. (1932-33) 175; Whaling Industry (Regulation) Bill [Lords] 1933-34, C. J. (1933-34) 295.

#### 5. PROVISIONS AUTHORIZED BY EXISTING LAW

Just as it has been ruled that provision for a charge upon public funds does not require the King's recommendation if it is a variant for and in substitution of a provision authorized by a previous statute (see p. 725), so it has been ruled that a scheme for raising a loan did not require to be preceded by a ways and means resolution, since it was covered by powers of borrowing conferred by a previous act and in substitution of the particular scheme authorized by that Act (t).

(s) Postage Bill, 1840; Parcel Post Bill, 1882; Telegraph Acts Amendment Bill, 1884-85; Postal and Telegraph Rates Bill, 1914-16; Post Office and Post Office (No. 2) Bills, 1918; Post Office and Telegraph Bill, 1920. In the case of the Bill of session 1914-16 a resolution was agreed to in committee of ways and means, but its consideration on report was not proceeded with in view of the Speaker's ruling that it was unnecessary, C. J. (1914-16) 243, 267; H. C. Deb. (1914-16) 74, c. 1035, 2034, 2117. See also resolution in case of Electric Telegraphs Bill, C. J. (1867-68) 350.

(t) See American Loan Bill, 1914-16, H. C. Deb. (1914-16) 74, c. 1219, 1272.

On the same analogy a tax authorized by a Finance Bill and subsequently suspended, has been re-imposed by a later bill without a ways and means resolution. (Finance 1920, s. 62 and Finance (No. 2) 1915, s. 49.)

#### 6. THE DELEGATION OF TAXING POWERS TO PARLIAMENTS OUTSIDE THE UNITED KINGDOM

The rules of financial procedure do not apply to provisions conferring powers of taxation in bills dealing with the constitution of parliamentary bodies in the dominions or colonies. Such provisions may be introduced without preliminary ways and means resolutions (*u*). Nor does any question of privilege arise if they are introduced into or amended by the Lords (*a*).

This rule has been applied in the case of the South Africa Bill [Lords], 1909, Government of Ireland Bill, 1920, etc.

#### 7. CHARGES NOT EFFECTIVE TILL APPLIED BY SUBSEQUENT LEGISLATION

Provisions in Finance Bills which alter the fiscal law may have the effect of increasing the charge upon the tax payer, but this increase may be contingent upon the passing of subsequent legislation. In such a case a ways and means resolution is not required for the provision authorizing the increase, but for the provision which puts it into effect.

The following instances may be mentioned: the abolition of the three years' average for the assessment of income tax by the Finance Bill, 1926 (put into effect by the Finance Bill, 1927); the substitution of surtax for super-tax by the Finance Bill, 1927 (made effective by the Finance Bill, 1928).

### B. CONSTITUTION AND PROCEDURE OF COMMITTEE OF WAYS AND MEANS

The Committee of Ways and Means is normally appointed at the same time and in the same way as the Committee of Supply (see p. 685).

The Committee of Ways and Means has been re-opened apart from the Committee of Supply (*b*).

#### FUNCTIONS OF COMMITTEE OF WAYS AND MEANS

The function of the Committee of Ways and Means considered in this section is the first of the functions referred to on p. 657, that of replenishing the Exchequer. The second function, that of directing money to be issued from the Exchequer, has been dealt with in the Chapter on Supply (p. 707). As stated on pp. 657-9 the old division of taxing functions between the Committee of Ways and Means and Committees of the whole House whereby the Committee of Ways and Means imposed the taxation required to defray the expenditure of the year, while taxes not directly intended for augmenting the revenue were considered in Committee of the whole House, is no longer observed. The Committee of Ways and

(*u*) H. C. Deb. (1912-13) 44, c. 857.

(*a*) H. C. Deb. (1920) 136, c. 795.

(*b*) C. J. (1930-31) 407; see also *ibid.* (1806-7) 803, 806; *ibid.* (1909) 418; *ibid.* (1914) 418, 444; *ibid.* (1920) 445.

Means is now the regular parliamentary authority for the initiation of taxation. It considers and votes resolutions for this purpose, and on its resolutions, when agreed to by the House, Finance Bills and other bills imposing taxation are founded. It will be convenient to consider first of all the general rules of procedure in Committee of Ways and Means, and then the special rules applicable to the "budget" resolutions upon which the Finance Bill is founded.

## GENERAL RULES OF PROCEDURE IN COMMITTEE OF WAYS AND MEANS

Apart from the budget resolutions on which greater latitude is permitted (see p. 754) each resolution in Committee of Ways and Means is considered separately, and debate and amendment should be relevant to the resolution under consideration (*c*).

When a resolution has been moved and proposed from the chair it is in the same position with regard to potential amendment as a resolution recommended by the Crown is in relation to amendments in Committee of the whole House. That is to say, it is not amendable in such a way as to increase the charge which it authorizes, whether such an amendment is proposed by an unofficial Member or by a Minister of the Crown. Examples of the restrictive effect of a ways and means resolution, once proposed from the chair, are stated on pp. 752, 760.

It has been held as contrary to precedent to take proceedings in Committee of Ways and Means unless it had been made effective by notice on the Order Paper. This notice may, however, be given in general terms and as detailed notice of such a resolution is not required, though it is sometimes given when the public interest would not be thereby prejudiced, the Chairman has allowed a resolution of which notice had been given to be moved in an altered form at the request of the Minister in charge (*d*).

### INCLUSION OF SEVERAL DUTIES IN ONE RESOLUTION

Probably because of the fact that notice of a ways and means resolution is not obligatory, objection is taken to the inclusion of several new duties relating to different commodities in a single resolution (*e*).

In the case of the Ottawa Agreements Bill, 1932, an enabling resolution was agreed to by the House for the purpose of authorizing the imposition of several new duties in a single resolution, H. C. Deb. (1931-32) 269, c. 622 *et seq.*; C. J. (1931-32) 309, 317, 318. When the so-called "McKenna duties," which had been repealed in 1924, were revived by the Finance Bill, 1925, objection was taken to their re-imposition, as new duties, in a single resolution, H. C. Deb. (1925) 183, c. 1016-29.

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(*c*) By general agreement a general debate has been allowed on the first of a series of resolutions in other cases as well as the budget resolutions. Import Duties, H. C. Deb. (1931-32) 261, c. 305; the resolutions preliminary to the Ottawa Agreements, *ibid.* (1931-32) 269, c. 43.

(*d*) Horticultural Products (Emergency Duties), H. C. Deb. (1931-32) 260, c. 783.

(*e*) H. C. Deb. (1916) 83, c. 560, 771; *ibid.* (1925) 183, c. 1015 *et seq.*

No objection applies to the imposition of a number of new duties of a similar kind (*f*), or the renewal at an increased rate of a number of existing taxes (*g*), by means of a single resolution.

#### PROCEDURE ON AMENDMENTS

The established usage of the House, in the form and method of dealing with amendments, and not the practice in use in the Committee of Supply (see p. 696), is followed in the Committee of Ways and Means; and every amendment must relate to the matter under consideration, and is governed by the rule of relevancy.

Amendments formerly offered to substitute for a resolution proposed by the government, an abstract resolution condemning in argumentative terms either their financial proposals or the imposition of a tax, C. J. (1852-53) 442; Parl. Deb. (1852-53) 126, c. 453; Notices of Motions (1871), p. 681, are not in accordance with existing practice, Parl. Deb. (1893-94) 11, c. 1327; *ibid.* (1895) 33, c. 919; *ibid.* (1925) 188, c. 2268.

The practice, formerly in use regarding the proposal of the questions for the longer or shorter time, had reference to the ancient mode of granting subsidies, which were rendered a lighter burden by being extended over a longer period (see p. 573); and this rule, in principle, is still regarded in the Committee of Ways and Means; and when the time at which a tax shall commence is being considered, as the most distant time is an alleviation of the burden, the question upon the most remote date is first put from the chair. The principle of this rule was not adhered to in putting the question for levying the property tax, C. J. (1852-53) 467. For the application of this rule, see C. J. (1833) 325; *ibid.* (1857) 86; *ibid.* (1859) 291, and *ibid.* (1860) 153.

#### AMENDMENTS INCREASING THE CHARGE

In view of the fact that, in order to secure the protection of the revenue afforded by the Provisional Collection of Taxes Act, 1913, taxing resolutions are regularly moved and agreed to by the Committee of Ways and Means at the same sitting, and in view of the further fact that they are normally moved without notice, the offer of amendments to such resolutions is rare in modern practice. However, if an amendment is offered, it is compared with the terms of the resolution proposed from the chair, and is ruled out of order if it in any way increases the amount or extends the area of incidence of the charge defined in those terms.

An amendment designed to extend to other manufacturers the imposition of licences, which under the terms of a resolution were limited to brewers, was ruled out of order, Notices of Motions (1862), p. 407.

Similarly an amendment extending the incidence of a tax to persons at the time exempted has been refused, Parl. Deb. (1845) 77, c. 637, 751.

In the case of a ways and means resolution, which proposed to increase the amount authorized by law to be raised by loan for certain services, amendments for the purpose of extending the services were disallowed, H. C. Deb. (1938-39) 344, c. 59.

(*f*) C. J. (1909) 151; H. C. Deb. (1909) 4, c. 1467, 1737.

(*g*) C. J. (1901) 139; *ibid.* (1916) 108.

In the past, amendments have been allowed proposing to substitute another tax of equivalent amount for the tax embodied in a resolution moved by the Government. In admitting such an amendment it was no doubt felt that the financial initiative of the Crown was not infringed since the *amount* of ways and means, designed to be yielded by the tax, had been demanded on behalf of the Crown, and this amount the amendment did not propose to increase.

Thus an amendment proposing to substitute probate and legacy duty on real property, as an alternative for inhabited house duty imposed by a resolution, has been admitted, C. J. (1852-53) 187, Parl. Deb. (1852-53) 123, c. 1571. See also a similar proposal to substitute a duty on soap for a duty on newspapers, C. J. (1836) 524; and see Denison, 89.

According to modern practice such an amendment is out of order. Even if the exact equivalence in the amount of the yield could be guaranteed (which is manifestly impossible), the objection, that the incidence of the tax proposed would be extended to persons previously exempt would be fatal to such an amendment (see p. 667).

## FINANCIAL STATEMENT AND BUDGET

The consideration of the financial statement for the year made by the Chancellor of the Exchequer (*h*), is the most important business of the Committee of Ways and Means. This statement, familiarly known as "the budget," is made when the Minister has completed his estimate of the probable income and expenditure for the financial year, and usually after some progress has been made in voting the grants for the army and navy and other public services (*i*). In this statement the Chancellor of the Exchequer develops his views of the resources of the country, communicates his calculations of probable income and expenditure, and declares whether the burdens upon the people are to be increased or diminished.

Financial statements have sometimes been made in a committee other than the Committee of Ways and Means, Parl. Deb. (1823) 9, c. 1413; *ibid.* (1852) 123, c. 836; *ibid.* (1857) 144, c. 631; *ibid.* (1860) 156, c. 812.

On the 29 April, 1915, the Chancellor of the Exchequer, on the motion for leave to bring in the Defence of the Realm (Amendment) (No. 3) Bill, anticipated part of the budget statement which he made on the 4 May, and certain resolutions necessary for the protection of the revenue were agreed to in Committee of Ways and Means immediately after the introduction of that bill, C. J. (1914-16) 105, 109; H. C. Deb. (1914-16) 71, c. 864, 926, 1000, 1009.

The resolutions which form the usual basis of the Chancellor's statement are the resolutions for the continuance, during the financial year, of the income tax, and the imposition of any new duties or alteration of permanent duties necessary for the purpose of adjusting the revenue to

(*h*) Or sometimes the First Lord of the Treasury, if a member of the House of Commons, as in session 1908, or the Lord Privy Seal as in session 1921, Parl. Deb. (1908) 188, c. 445; H. C. Deb. (1921) 141, c. 67. See also p. 365.

(*i*) In the years 1845, 1848, 1852 and 1857, the budget statement was made in anticipation of the customary votes in committee of supply, Parl. Deb. (1845), 77, c. 455; *ibid.* (1847-48) 96, c. 900, 987.

the expenditure of the year ; and upon these and any other necessary resolution, when agreed to by the House, the bill is introduced which gives legislative effect to the financial purposes of the Government.

*Mr. Bowles' case, 1913.*—Before 1913, the Treasury had taken the ways and means resolutions as sufficient justification for continuing the imposition of such annual taxes, and for making such changes in the permanent taxes, as would be imposed and made by the Finance Act when passed. But when the procedure was challenged by Mr. Gibson Bowles in 1912 and the High Court held that the deduction of income tax on the alleged authority of a ways and means resolution was invalid (*Bowles v. Bank of England* [1913] 1 Ch. 57), the Government had recourse to legislation, and the Provisional Collection of Taxes Act, 1913, was passed, giving statutory force for a limited period to any ways and means resolution varying an existing tax, or renewing for a further period a tax enforced or imposed during the previous financial year whether at the same or a different rate.

#### SPECIAL PROCEDURE ON BUDGET RESOLUTIONS

The procedure in respect of the budget resolutions, on which the Finance Bill is introduced, differs from the ordinary procedure in Committee of Ways and Means for several reasons. Their purpose is to provide the balance of revenue which, when added to the estimated revenue derived from permanent taxes, will suffice to cover the estimated expenditure of the year. Hence the committee must be at liberty to consider the resolutions, proposed by the Chancellor of the Exchequer, as forming together with existing taxation a complete scheme of revenue to be debated as a whole ; and must also be at liberty to consider expenditure in its relation to the burden of providing the necessary revenue. A general debate, which is on the broadest lines, is accordingly permitted, comprising all these resolutions and any financial resolutions (*k*) necessary to the budget ; to allow of this, all resolutions except the last are now put immediately after the financial statement, and debate is carried on on the last resolution (*l*). There are two other features which make procedure on the budget resolutions peculiar. The secrecy with which changes in taxation have to be guarded, until the conclusion of the Chancellor's statement, makes debate on his proposals unprofitable until there has been time for the report of his speech and any papers (*m*) he has presented to be studied ; and, in fact, debate on the first day is often only formal. On the other hand, in order to secure the protection of the revenue afforded by the Provisional Collection of Taxes Act, it is necessary to pass any resolutions to which this Act applies before the committee rises ; and, therefore, according to present practice, all the resolutions, except the last, are agreed to on the first day. From these features two results follow. No individual consideration is given, and consequently no opportunity of amendment arises, in the case of a budget resolution in Committee of Ways and Means. And, secondly, during the

(*k*) H. C. Deb. (1916) 21, c. 1587.

(*l*) H. C. Deb. (1939-40) 363, c. 657. Before 1940, however, the general debate was carried on during the first day on the first Resolution, whatever its purport, moved by the Chancellor.

(*m*) The annual Financial Statement of Revenue and Expenditure is circulated immediately at the conclusion of the Budget speech.

subsequent days in committee on the budget resolutions there is nothing formally before the committee but the last resolution—generally that for the purpose of amending the fiscal law (*n*)—which, however, by an accepted convention contrary to the normal rule of relevance, is permitted to serve as a “peg” for the continuance of the general debate on the budget resolutions, as a whole, including any which require to be moved in a Committee of the whole House.

Resolutions authorizing expenditure, which are necessitated by provisions in a Finance Bill, although they are treated for most purposes as part of the “budget resolutions” cannot be agreed to in committee on the day on which the Chancellor of the Exchequer opens his budget. Unlike ways and means resolutions, notice must be given of them before they are moved, and they are consequently considered in Committee of the whole House on a subsequent day. Two resolutions, which should have been moved in a Committee of the whole House, having been inadvertently agreed to in Committee of Ways and Means, the House deferred the report of these resolutions and later discharged the order for their consideration. The resolutions were subsequently moved in an appropriate committee, C. J. (1917-18) 84, 86, 87, 90, 92. This procedure should probably have been adopted in other cases (*o*). The order for consideration of a resolution agreed to in Committee of Ways and Means, which proved to be unnecessary, as the charge imposed was not a tax but payment for services rendered (see p. 749), has been discharged, C. J. (1914-16) 243, 267; H. C. Deb. (1914-16) 74, c. 1035. For these formal lapses the unavoidable secrecy of budget resolutions is responsible.

#### PROVISIONAL COLLECTION OF TAXES

In the case of resolutions of the Committee of Ways and Means, providing for the variation of any existing tax or for the renewal (*p*) of any tax in force or imposed during the previous financial year with or without modifications and either at the same or a different rate, a declaration may be included in the resolution that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913 (*q*). The effect of the inclusion of this declaration is to give the resolution in question statutory effect for a period of four months after the date on which the resolution is expressed to take effect (*r*), or, if no such date is expressed, the date on which the resolution is agreed to in the Committee of Ways and Means (*s*). The resolution ceases, however, to have statutory effect, if it is not agreed to by the House with or without modification within the next ten days on which the House sits after the resolution was agreed to in committee, and if a bill varying or renewing the tax is not read a second time by the House within the next twenty days on which the House sits

(*n*) In 1929 the resolution for the repeal of the tea duty was used for this purpose, C. J. (1928-29) 211.

(*o*) E.g. Finance (Power to Borrow, etc.), C. J. (1936-37) 232.

(*p*) Renewal includes re-imposition, Provisional Collection of Taxes Act, 1913, s. 1 (3).

(*q*) As the Act does not extend to new taxes, resort is had to the authority described on p. 754, if it is intended to collect a new tax before the Act authorizing its imposition can be passed.

(*r*) This may make it retrospective not only of legislation but also of authorization in committee on the Resolution.

(*s*) Provisional Collection of Taxes Act, 1913, s. 1 (2).



after the resolution is agreed to (*t*). The resolution ceases to have statutory effect in the event of a dissolution or prorogation of Parliament, or on the passage of an Act renewing or varying the tax, or by the rejection of the provisions giving effect to the resolution. If the resolution is modified by the House it has effect as so modified (*u*). The application of the Act is limited to one resolution of the same effect during the same session (*a*).

The Provisional Collection of Taxes Act, s. 1 (2) fixes the date by which the Finance Bill should receive the Royal assent as not later than 5 August, in view of the fact that an income tax resolution takes effect on 6 April. If the provisions of the Parliament Act, 1911, should need to be applied, this would fix 5 July as the date before which the Finance Bill should be sent to the House of Lords. See Mr. Attorney General's statement, H. C. (Deb. (1930-31) 253, c. 410-2.

#### NEW DUTIES OF CUSTOMS AND EXCISE

The Provisional Collection of Taxes Act does not apply to the imposition of new taxes not in force during the previous financial year. This is an omission which might be detrimental to the collection of the revenue from customs and excise. It has been supplied by the Finance Act 1926, section 6 of which provides, that in respect of new duties of customs or excise, which have been imposed by ways and means resolutions as from a prescribed date, provision may be made for securing their collection from that date by the requiring of security in the case of customs duties and by regulations to be made by the Commissioners in the case of excise duties.

#### PROVISIONAL AUTHORIZATION OF ISSUES OF CONSOLS AND EXCHEQUER BONDS

By analogy, it has been the practice of the Treasury to act upon resolutions authorizing an issue of consols or exchequer bonds as soon as they are agreed to in committee (*b*). It is necessary, however, that statutory authority for the issue should be obtained before the first payment of dividend falls due (*c*).

#### CONSIDERATION OF REPORTS FROM COMMITTEE OF WAYS AND MEANS.

The rules of procedure governing the consideration of resolutions reported from the Committee of Ways and Means are the same as those which govern the report of resolutions from Committee of Supply or from committees of the whole House authorizing expenditure, which have already been described (pp. 703, 734).

#### C. FINANCE BILLS AND OTHER BILLS FOUNDED ON WAYS AND MEANS RESOLUTIONS

##### INTRODUCTION OF BILLS

When reports of the Committee of Ways and Means in its taxing capacity have been agreed to by the House, bills, the most important of which is

(*t*) Provisional Collection of Taxes Act, 1913, s. 1. (1) (*a*).

(*u*) Provisional Collection of Taxes Act, 1913, s. 1. (1) (*b*).

(*a*) Provisional Collection of Taxes Act, 1913, s. 1. (1) (*c*).

(*b*) Parl. Deb. (1905) 145, c. 842.

(*c*) 4 P. A. C. (1903), p. 14.

the Finance Bill, are ordered to be brought in to carry the resolutions into effect. In other cases as is explained elsewhere (see below) the House agrees to such resolutions in order to authorize subsidiary provisions in a bill already presented and read a second time.

The resolutions on which a Finance Bill (and occasionally other taxing bills) is founded may comprise resolutions of a Committee of the whole House with the King's recommendation as well as ways and means resolutions; and the resolutions may have been agreed to on different days. In such a case the usual practice is for the bill to be ordered when the last ways and means resolution is agreed to, with an entry in the Votes and Proceedings and Journal recording that it is based as well on earlier resolutions indicated by the days on which they were agreed to by the House (*d*).

Any resolutions reported from a Committee of the whole House, which may be necessary in view of provisions in the Finance Bill, are then agreed to, the Members appointed to prepare and bring in the bill are instructed to make provision therein accordingly, and the bill is presented (*e*). Alternatively, the resolutions of Committees of the whole House, when agreed to, are included along with the ways and means resolutions among the resolutions on which the bill is ordered to be brought in (*f*).

When a bill brought in on resolutions reported from the Committee of Ways and Means is withdrawn, and it is desired to replace it by another bill, with similar objects, the resolutions on which the first bill was founded are read again and a second bill is ordered either upon all, or upon certain of these resolutions, C. J. (1856) 126; *ibid.* (1857) 185; *ibid.* (1884-85) 264, 306; Votes and Proceedings, 29 May, 1945.

Two bills have been founded on the same series of resolutions—Finance Bill, 1916, and Finance (New Duties) Bill, 1916, C. J. (1916) 48, 65.

Provisions in a bill, which had been presented in the ordinary way, involving the payment of receipts into the Exchequer, which accordingly required to be authorized by a ways and means resolution, were regarded as authorized by one of the resolutions on which another bill (a Finance Bill) was founded, C. J. (1928) 121 (Currency and Bank Notes Bill, 1928).

## RELATION OF BILLS TO WAYS AND MEANS RESOLUTIONS

Bills enacting provisions which require the preliminary authorization of ways and means resolutions, should, in some cases, be ordered to be brought in upon such resolutions, but in other cases may be presented with these provisions printed in italics, subject to their being "vitalized" before being considered in committee. The form of procedure appropriate in each case is decided on the same principles as those applied to bills authorizing expenditure (see p. 490). There is, however, much less room here for doubtful cases, as taxation for the revenue of the year is concentrated in a single bill, and even when taxation is not primarily for this purpose, it can hardly fail to be the main purpose of the bill which authorizes it, unless it is obviously insignificant.

(*d*) C. J. (1909) 203; *ibid.* (1924) 182.

(*e*) C. J. (1907) 174; *ibid.* (1917-18) 90; *ibid.* (1928) 143.

(*f*) C. J. (1936-37) 233.

Examples of subsidiary provisions in bills requiring ways and means resolutions are normally such matters as the payment of receipts into the Exchequer, or the imposition of an excise licence in a bill regulating a trade, see *Moneylenders*, 1926, C. J. (1926) 226. Occasionally general taxing provisions in a bill (other than the Finance Bill, see p. 757) have been treated as subsidiary, see Mr. Speaker's ruling on Imports and Exports Regulation Bill, 1919, H. C. Deb. (1919) 122, c. 211.

#### BILLS FOUNDED ON WAYS AND MEANS RESOLUTIONS

When a bill is based on ways and means resolutions, *all* its provisions, not only those which impose taxation, must be covered by the resolutions on which it is brought in. Thus the resolutions on which the Finance Bill is brought in usually include a resolution providing for the amendment of the fiscal law, which would not otherwise require to be moved in Committee of Ways and Means.

It has been decided that the "Amendment of Law" Resolution is not sufficient authority for the inclusion in a Bill of a taxing provision not separately covered by a specific ways and means resolution, see Mr. Speaker's ruling on Revenue Bill, 1913, H. C. Deb. (1913) 56, c. 319, 1010.

If any provisions of a bill are found to go beyond the resolutions, as agreed to by the House, on which the bill is founded, further resolutions must be passed and agreed to by the House, before those provisions are considered in committee on the bill (*g*), or the bill must be amended so as to conform to the resolutions to which the House has agreed (*h*).

Where the provisions not authorized by resolutions have not been provisions imposing taxes or charges, an instruction to the committee to enable it to consider these provisions has been allowed, C. J. (1914) 307, H. C. Deb. (1914) 64, c. 383. Such an instruction ought, according to the usual practice with instructions, to be moved before the House has gone into committee on the bill.

#### BILLS WITH ITALICS

The procedure on bills which contain subsidiary provisions necessitating ways and means resolutions is the same as that on bills containing subsidiary provisions involving expenditure. These provisions are printed in italics in the copies of the bills as presented, and cannot be considered in committee until the necessary ways and means resolutions have been agreed to by the House.

Clauses imposing taxes in a bill such as the Finance Bill, the main purpose of which is to authorize taxation, cannot be printed in italics, but must be preceded by the necessary ways and means resolutions.

#### SCOPE OF FINANCE BILLS

The scope of a Finance Bill is not limited to the imposition and alteration of taxes for the purpose of adjusting the revenue of the year. It is

(*g*) For the purpose of linking such a resolution with the bill to which it relates, the House on agreeing to the resolution orders an instruction to the committee on the bill enabling them to make provision accordingly. Instructions for this purpose may be ordered after the committee has made progress with the bill, C. J. (1881) 240; *ibid.* (1894) 204, 236; Parl. Deb. (1894) 24, c. 1201. See also Mr. Speaker's ruling on the Finance Bill, 1924, H. C. Deb. (1924) 172, c. 1608, and Economy (Miscellaneous Provisions) (No. 2) 1926, C. J. (1926) 124.

(*h*) C. J. (1894) 204; Parl. Deb. (1894) 25, c. 982; C. J. (1914) 352; H. C. Deb. (1914) 64, c. 1973.

not intended to be an annual act in the same sense as the Appropriation Act, but normally includes many provisions of a permanent character for the regulation of fiscal machinery and other purposes. But, although the taxation it imposes may extend beyond the current financial year, a Finance Bill is regarded as exceeding its proper scope if it imposes a tax, payment of which is not to be demanded until after the close of the current financial year.

In the Finance Bill, 1931, it was desired to include a duty on land values, which, owing to administrative reasons, was not intended to come into operation until the subsequent financial year. In order to authorize this extension of the recognized scope of a Finance Bill, an enabling resolution, agreed to by the House on 30 April 1931, was ruled to be necessary, C. J. (1930-31) 234. See also rulings on amendments not relating to the finance of the year proposed to Finance Bills, H. C. Deb. (1912-13) 41, c. 2859; *ibid.* (1927) 205, c. 761, 801. In 1907 provision for the transfer after the close of the financial year of certain charges from intercepted revenue to the Consolidated Fund was not permitted to be included in the Finance Bill.

The scope of a Finance Bill may also be limited by a desire to bring its contents within the provisions of the Parliament Act, 1911 (see p. 778). To achieve this result the budget resolutions have been divided between two bills, and the Finance Bill has been brought in on the taxing resolutions, while the fiscal and administrative provisions, which would otherwise have been included in the same bill, have been embodied in a Revenue Bill, which has been brought in on the customary general non-taxing resolution for the "amendment of law." (i).

Provisions authorizing expenditure not essentially connected with national finance, or not incidental to the taxing or administrative provisions of a Finance Bill, are outside the scope of a Finance Bill, and their inclusion might justify an accusation of "tacking" (see p. 770).

## DEBATE ON MAIN STAGES

Debate and amendment on the second and third reading of bills introduced on ways and means resolutions are governed by the ordinary rules of relevancy (k). These are, however, not so strictly enforced on the second reading of the Finance Bill as to prevent a general review of national finance.

When two bills had been brought in on the budget resolutions, the first of which bills embodied new taxes only, the Speaker ruled that a general review of the finances of the country was out of order on that bill and should be reserved for the Finance Bill, H. C. Deb. (1916) 81, c. 1507, 1509, 1531.

On the other hand, in session 1928-29, when the proposals of the budget were to be embodied in two bills, one of which was not to be introduced until the following session, the Speaker allowed the whole financial position

(i) C. J. (1913) 125; *ibid.* (1914) 215.

(k) Parl. Deb. (1895) 33, c. 1376; *ibid.* (1903) 123, c. 327; *ibid.* (1905) 146, c. 589; *ibid.* (1906) 158, c. 355; H. C. Deb. (1918) 107, c. 655; *ibid.* (1919) 118, c. 1492; *ibid.* (1920) 132, c. 1472, 1495.

to be discussed on the earlier Finance Bill, although it contained part only of the Government's financial proposals, H. C. Deb. (1928-29) 227, c. 1093.

#### AMENDMENTS IN COMMITTEE ON BILLS

Amendments in committee on the Finance Bill, and other bills founded on ways and means resolutions, are governed in the first place by the ordinary rules applicable to bills generally (see pp. 517-30). The Finance Bill is in a rather special position owing to the characteristics mentioned above. The following points may be noted. When one of the resolutions on which a Finance Bill is founded is the customary "Amendment of Law" resolution, no instruction is needed to enable the committee to receive new clauses for the remission of taxes in force which are not dealt with by the bill.

When the "Amendment of Law" resolution had been agreed to by the House in a restricted form so as to exclude the consideration of import duties imposed by another Act of the same session, amendments for the remission of those duties were not in order, C. J. (1931-32) 177.

When a clause enabled the Treasury to borrow money for Consolidated Fund purposes by any method authorized by legislation, an amendment to establish a system of premium bonds for the purpose was ruled out of order, H. C. Deb. (1917-18) 95, c. 1048.

An amendment proposing to remove a commodity from the free list of imports, and thereby impose a tax upon it, was ruled in order on a bill founded on a ways and means resolution authorizing a charge of a customs duty on all goods imported into the United Kingdom except goods specifically exempted by the contemplated Act. (H. C. Deb. (1932) 261, c. 1869.)

#### RULES FORBIDDING THE INCREASE OF CHARGES

Amendments must not exceed the scope, increase the amount or extend the incidence of any charge upon the people, defined by the terms of the ways and means resolutions, as agreed to by the House, by which the provisions proposed to be amended are authorized (*l*). The rule is essentially the same as that in connection with financial resolutions explained in pp. 539-402. If it is desired to move new clauses or amendments which exceed the terms of the relevant ways and means resolutions, further resolutions must be voted, in committee of Ways and Means and agreed to by the House with instructions to the committee on the bill before such new clauses or amendments can be considered (*m*).

A new clause offered in committee on a bill, which proposed to alter the incidence of income tax as between landlord and tenant, was ruled out of order on the ground that it increased the existing charge upon one of the parties, H. C. Deb. (1916) 83, c. 941.

An amendment moved in committee on a bill, proposing to vary the method of levying a new tax, was required by the Chair to be framed in such a way

(*l*) Parl. Deb. (1894) 24, c. 1219; *ibid.* (1901) 96, c. 473; *ibid.* (1904) 136, c. 591; *ibid.* (1904) 138, c. 527; C. J. (1909) 473; H. C. Deb. (1909) 11, c. 1763; *ibid.* (1912-13) 41, c. 2425, 2451; *ibid.* (1914) 64, c. 690; *ibid.* (1914-16) 75, c. 202, 204, 217; *ibid.* (1916) 83, c. 941; *ibid.* (1919) 118, c. 325.

(*m*) C. J. (1918) 135; *ibid.* (1921) 259

as not to increase the charge which would be imposed on any individual payer of the tax, H. C. Deb. (1916) 81, c. 1812.

#### CHARGE IN BILL LESS THAN THAT AUTHORIZED BY RESOLUTION

When a tax is imposed in a bill, subject to alleviations of any kind which were not expressed in the resolution authorizing the tax, or for a shorter period than the period (if any) specified in the resolution, amendments are in order in committee on the bill to omit the alleviation (*n*) or extend the period (*o*) up to the limit laid down by the resolution, as agreed to by the House.

#### PROVISIONS REDUCING EXISTING CHARGES

The rule that the repeal or reduction of an existing tax, though it may be embodied in a ways and means resolution, is not subject to the rules of financial procedure, applies to the committee and also to the report stages of bills. Hence at these stages amendments are in order to reduce or omit drawbacks or other alleviations of existing taxes proposed by the bill (*p*). Cases of unalloyed reduction of existing taxes should, however, be distinguished from cases where, in a ways and means resolution, an existing tax is increased in conjunction with the increase of an existing, or creation of a new, alleviation such as a drawback. In such a case, as stated earlier (p. 746) the new or increased alleviation could not be reduced or omitted without an increase of the whole charge, of which it is regarded as forming a limiting condition.

#### PROCEDURE ON REPORT OF A BILL

On the report stage of a taxing bill, such as the Finance Bill, no amendment can be moved which increases the charge contained in the bill as reported from the committee, even if such charge is less than that authorized by the ways and means resolutions (*q*). A new clause or an amendment cannot be moved at this stage for the imposition or increase of a charge, or for the inclusion in the liability to a tax of persons whose inclusion was not authorized by the bill when it left the committee (*r*).

When any alleviation of an existing tax has been granted by a provision in the bill, as introduced, or by an amendment in committee, the alleviation can be struck out on report by the House, as the effect of such action is to leave the tax as it was (*s*).

#### RECOMMITTAL OF BILL FOR PURPOSE OF INCREASING CHARGE

When a bill has been reported, and it is desired to make amendments in it which are not covered by the resolutions on which the bill or particular

(*n*) H. C. Deb. (1914-16) 75, c. 218.

(*o*) H. C. Deb. (1914-16) 75, c. 249.

(*p*) H. C. Deb. (1917-18) 95, c. 829.

(*q*) H. C. Deb. (1933) 279, c. 699.

(*r*) H. C. Deb. (1914-16) 73, c. 763, 766; *ibid.* (1914-16) 76, c. 1087, 1249, 1251, 1321; *ibid.* (1919) 118, c. 1467. An amendment to extend the principle of aggregation of income applicable to a husband and wife for income tax purposes to the case of a widower and a relative living in the same house has been ruled out of order, H. C. Deb. (1918) 106, c. 2457.

(*s*) H. C. Deb. (1914-16) 76, c. 1074. See also *ibid.* (1922) 156, c. 1522.

provisions in it are founded, it is necessary to re-commit the bill in respect of the amendments to be proposed. This is done either before the beginning or after the conclusion of the report stage. But before the amendments can be considered by the committee on the re-committed bill, a resolution or resolutions covering the desired amendments must have been voted by the Committee of Ways and Means and agreed to by the House with an instruction to any committee to which the bill may be re-committed that they have power to make provision therein pursuant to the resolution (or resolutions) (*1*).

#### THIRD READING OF FINANCE BILL, ETC.

On third reading of a Finance Bill, debate and amendment must be strictly relevant to the contents of the bill, and the expenditure of the year and alternative methods of providing revenue should not be made the subject of consideration.

A Finance Bill, like a Consolidated Fund Bill and any other bill based upon ways and means resolutions, is returned for custody to the Commons after being passed by the Lords, and is handed in by the Speaker at the bar of the House of Lords for the purpose of receiving the Royal assent (see p. 558). These bills, moreover, form a class of bills which cannot be amended by the Lords without infringement of the privileges of the House of Commons. This matter is dealt with in the next chapter.

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(*1*) C. J. (1916) 135 ; *ibid.* (1921) 259.

## CHAPTER XXVIII

### THE HOUSE OF LORDS AND CHARGES

The financial powers of the House of Lords are limited, first by the ancient "rights and privileges" of the House of Commons, and secondly by the terms of the Parliament Act, 1911. It will be convenient first to set out in detail the relations between the two Houses which depend upon those rights and privileges, and then to explain the practice which has been introduced by that Act. It is all the easier to keep these parts of procedure separate, as section 6 of the Parliament Act expressly states that "nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons" (see p. 779).

The long historical process by which the claims of the House of Commons have been defined and enforced will not be described in the present chapter which will be restricted as far as possible to the existing practice.

#### THE FINANCIAL FUNCTIONS OF THE LORDS

##### CONCURRENCE IN SUPPLIES AND TAXATION

Stated generally, the responsibility discharged by the Lords in the grant of supplies for the service of the Crown, and in the imposition of taxation, is concurrence, not initiation or amendment. Thus, while the demand for supply made in the speech from the throne on the opening of a session is directed to the Commons, the speech is addressed to both Houses of Parliament; and to the financial legislation which that demand creates the Lords must be a consenting party.

##### INSISTENCE BY THE LORDS ON THE FINANCIAL POWERS RESERVED TO THEM

While the Lords, tacitly at any rate (*a*), acquiesce in the Commons' claim to financial privilege, they in their turn claim the proper recognition of their constitutional responsibilities in the matter of finance, and insist upon all facilities which are necessary for the due exercise of their responsibilities. The following examples may be adduced:—

**Messages from the Crown for pecuniary aid.**—The Lords have taken exception, if a message from the Crown for pecuniary aid is sent exclusively to the Commons, and it is a long-established custom to present such messages to both Houses, if possible upon the same day (*b*),

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(*a*) It should be noted that their resolution of 1702 condemning the practice of "tacking" (see p. 771) virtually admits their inability to amend bills of supply.

(*b*) 25 June, 1713, and 28 February, 1739, 2 Hatsell 366, n. The message in regard to the provision for her Majesty Queen Adelaide, on the 14 April, 1831, was presented to the Commons alone, C. J. (1830-31) 488.



addressing the demand for the grant to the Commons, and desiring the concurrence of the Lords, respectively, a procedure which maintains the constitutional relations of the two Houses of Parliament in matters of supply (*c*). The reply made by the Lords to the message is an address to the Crown, declaring their willingness to concur in the measures which may be adopted by the other House (*d*).

**Consideration of public expenditure.**—The Lords also express their opinion upon the public expenditure, and the method of taxation and financial administration, both in debate and by resolution, and they investigate those matters by their select committees. Nor do the Commons, as formerly, attempt to exclude the Lords from inquiries of this nature by not transmitting to them reports and papers relating to taxation, or by declining to permit the attendance of a Member to give evidence on this subject before a select committee of the Lords (*e*).

When the Commons failed to provide for the appropriation of certain temporary supplies which they voted prior to the dissolution of 1820, caused by the death of George III (see p. 676), the Lords, by a resolution, took notice that those supplies had not been duly brought before them by an Appropriation Bill (*f*).

## RESTRICTIONS UNDER CONSTITUTIONAL USAGE

### BASIS OF MODERN PRACTICE WITH RESPECT TO PRIVILEGE

The modern practice in respect of the Commons' financial privileges is based upon the resolution of 1671 "That in all aids given to the king by the Commons, the rate or tax ought not to be altered by the Lords"; and that of the 3rd July, 1678, "That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords" (*g*).

The principles expressed in the resolutions of 1671 and 1678 were re-stated and amplified by subsequent resolutions (*h*) of the Commons on two notable occasions in the financial history of the two Houses—in 1860 after the rejection by the Lords of the Paper Duty Repeal Bill and in 1910 after the rejection by the Lords of the Finance Bill, 1909.

### LOCAL RATES

Under the bills referred to in the above resolutions the Commons have long included not only bills dealing with the public expenditure

(*c*) L. J. (1841) 28, C. J. (1841) 29 (Lord Keane); L. J. (1856) 129, C. J. (1856) 186 (Sir F. Williams); Lord Alcester and Lord Wolseley, 1883, etc. See also Parl. Deb. (1899) 72, c. 319; *ibid.* (1907) 179, c. 977.

(*d*) L. J. (1830-31) 892.

(*e*) Poor Law (Ireland), 1846, C. J. (1846) 283, 335; Parochial Assessment, 1850; *ibid.* (1850) 368. The report (24 May, 1867) on Metropolis Local Taxation was communicated to the Lords, C. J. (1867) 244, 256.

(*f*) L. J. (1820) 17, Parl. Deb. (1820) 41, c. 1631-35.

(*g*) C. J. (1667-87) 235, 509.

(*h*) See Resolutions C. J. (1860) 360; Parl. Deb. (1860) 159, c. 1383; and C. J. (1910) 95.

and revenue but also bills which deal with local (and other) rates, for instance bills affecting the Local Loans Fund, a fund derived in part from local taxation, with the guarantee of the Consolidated Fund (sec p. 722) (*i*).

GENERAL BUT NOT PUBLIC FUNDS NOT WITHIN THE SCOPE OF PRIVILEGE

On the other hand the claim to an exclusive right over financial legislation asserted by the Commons has not been extended to bills dealing with funds set apart for the purposes of general, but not public, utility. For instance, bills comprising charges upon the property and revenues of the Church or the Queen Anne's Bounty (*k*); dealing with the property and land revenues of the Crown, the proceeds of which are not consigned by statute to the Consolidated Fund (*l*); and bills applying to various purposes the fund created by the Irish Church Act, have been received from the Lords by the Commons, or amended by the Lords, without objection on the score of privilege (*m*).

DELEGATION OF TAXING POWERS OUTSIDE THE UNITED KINGDOM

Provisions conferring powers of taxation in bills dealing with the constitutions of Dominions or other parts of the British Empire are outside the scope of privilege. They may be amended by the Lords without infringement of privilege (*n*), and they may be accepted by the Commons as integral parts of bills brought from the Lords (*o*).

ACTIONS WHICH INFRINGE PRIVILEGE

Stated generally, the Commons claim privilege in respect of national taxation and expenditure, and in respect of local rates and charges upon them. They do not claim privilege in respect of sectional funds, such as Church revenues, even if publicly administered. But with regard to those charges in respect of which they claim privilege, the Commons treat as a breach of privilege by the Lords not merely the imposition or increase of such a charge but also any alteration, *whether by increase or reduction*, of its amount or of its duration, mode of assessment, levy, collection, appropriation or management; and, in addition, any alteration in respect of the persons who pay, receive, manage, or control it, or in respect of the limits within which it is leviable. In short, any interference by the Lords in matters, in respect of which privilege is claimed, is treated by the Commons as an infringement of privilege (*p*).

(*i*) Land Purchase (Ireland) Bill, 1888; see Lord Chancellor's opinion, Parl. Deb. (1888) 331, c. 1224, 1226. See also Speaker's ruling on Lords' amendment to Licensing Bill, 1904; *ibid.* (1904) 140, c. 330. Such bills are excluded from the scope of the Parliament Act.

(*k*) Church Endowment Bill, 1843; Ecclesiastical Commissioners (England) Bill, 1843; Bishopric of Manchester Bill, 1847; Tithe Bill, 1936.

(*l*) Waste Lands (Australia) Bill, 1846.

(*m*) Intermediate Education (Ireland) Bill [Lords] C. J. (1878) 338; Arrears of Rent (Ireland) Bill; *ibid.* (1882) 451. See also p.

(*n*) Government of Ireland Bill, 1920, H. C. Deb. (1920) 136, c. 795.

(*o*) South Africa Bill [Lords] 1909, C. J. (1909) 392.

(*p*) See Speaker's rulings on Municipal Corporations (Ireland) Bill, 1839, Parl. Deb. (1839) 50, c. 3; Local Government (England and Wales) Bill, 1893, Parl. Deb. (1893) 21, c. 686; Public Libraries (Scotland) Bill, 1920, H. C. Deb. (1920) 133, c. 368; Unemployment Insurance Act (1920) Amendment Bill, 1921, *ibid.* (1921) 138, c. 2066; Police Pensions Bill, 1921, *ibid.* (1921) 144, c. 1699; Unemployment Insurance (No. 2) Bill, 1924, 176 *ibid.* 2210. See also debate in Lords on an amendment proposed to the Voluntary Schools Bill, 1897, Parl. Deb. (1897) 48, c. 360.

Bearing in mind the connotation hereby given to the term "privilege" the Commons' claim to "privilege" may be analysed into :—

1. Restriction of the Lords' right to *initiate* bills.
2. Restriction of the Lords' right to *amend* bills.
3. Admission of the Lords' right to *reject* bills.

The third of these headings clearly stands by itself. But it is important also to distinguish between cases of privilege in Lords' bills and cases of privilege in Lords amendments to Commons' bills. There is a considerable difference between the attitude of the Commons to the former and their attitude to the latter, as regards insisting upon or waiving their privileges, or relaxing their claims; and also as regards the expedients which have been devised to prevent the formal infringement of privilege, while conceding it in substance to the Lords.

It is the function of the Speaker to direct the attention of the House, when occasion arises, to a breach of its privileges in bills or amendments brought from the Lords, and to direct the special entries to be made in the Journals by which the House, in respect of particular amendments, signifies its willingness to waive its privilege without thereby establishing a general precedent.

#### 1. RESTRICTIONS ON THE LORDS' RIGHT TO INITIATE BILLS

The Commons are not prepared to consider bills sent down from the Lords which contain provisions infringing privilege in any of the ways mentioned on p. 765. Bills which thus infringe the privileges of the Commons, when received from the Lords, are either laid aside or postponed for six months (*q*).

Except in the cases mentioned below in respect of which the Commons have by standing order permanently relaxed their claims to privilege, it may be stated generally that the Commons (contrary to their practice regarding amendments) never waive their privileges in relation to public bills sent down from the Lords, and rarely in relation to private bills so sent down.

Thus two private bills were laid aside, because when sent down by the Lords, they contained clauses imposing a stamp duty on memorials (*r*); and second bills were brought in, in accordance with the practice mentioned on p. 900. Another private bill, brought from the Lords, containing privilege clauses, was, however, permitted to proceed, on an explanation from the Speaker that the promoters of the bill were not responsible for the irregularity, and that the clauses would be withdrawn (*s*).

The practice in this matter, observed in both Houses, is now so regular and well understood that the Lords never deliberately send down a bill which formally infringes the privileges of the Commons. In cases of doubt, informal consultation between the officers of the two Houses prevents the Lords from inadvertently confronting the Commons with a

(*q*) C. J. (1660-67) 311; *ibid.* (1801) 88; *ibid.* (1830-31) 905; *ibid.* (1837) 659; *ibid.* (1846) 724; *ibid.* (1850) 458; *ibid.* (1857) 404; *ibid.* (1860) 308, 361; Parl. Deb. (1860) 159, c. 539; C. J. (1889) 304, 316.

(*r*) The Provident Life Assurance Bill and the Imperial Life Assurance Bill, 1889, C. J. (1889) 304, 316; see also Royal Dublin Society Bill, 1877, *ibid.* (1877) 299.

(*s*) C. J. (1873) 194; Parl. Deb. (1873) 215, c. 1675.

bill which the latter might consider themselves justified in regarding as a breach of their privileges. Bills which have made progress in the Lords have been withdrawn when it has been ascertained that they would be regarded as infringing the privileges of the Commons, *e.g.* Outdoor Relief (Friendly Societies) Bill, 1904, Local Government (Adjustments) Bill, 1913, and Riot (Damages) Bill, 1922.

#### RELAXATION OF PRIVILEGE BY STANDING ORDER

The Commons have by standing order relaxed their privilege in certain classes of cases :—

(i) **In regard to pecuniary penalties and fees.**—The claim to exclusive legislation over charges imposed upon the people was formerly extended by the Commons to the imposition of fees and pecuniary penalties, and to provisions which touched the mode of suing for fees and penalties (*t*), and to their application when recovered ; and they denied to the Lords the power of dealing with these matters. The rigid enforcement of this claim proved inconvenient, and in 1849, the Commons adopted a standing order (now No. 44) based on a resolution passed in 1831 (*u*), which gave the Lords power to deal, *by bill or amendment*, with pecuniary penalties, forfeitures, or fees, when the object of such penalties or forfeitures was to secure the execution of an Act ; and when the fees imposed were not payable into the exchequer, or in aid of the public revenue. A similar power was conferred upon the Lords at the same time in the case of a private bill for a local or personal act.

(ii) **In regard to tolls and rates in private and provisional order bills.**—Under S.O. 191, the Commons have surrendered their privileges as far as they affect private and provisional order bills sent down from the House of Lords, which refer to tolls and charges for services performed, not being in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes (*a*).

Provisions dealing with both these classes of matters are consequently not underlined or printed in brackets in copies of the Lords' bills, in accordance with the practice, for avoiding formal infringement of privilege in particular cases, mentioned below.

#### EXPEDIENTS FOR AVOIDING FORMAL INFRINGEMENT OF PRIVILEGE IN LORDS' BILLS

The following expedients have been adopted, when there is good reason for supposing that a bill introduced in the Lords, containing provisions which deal with charges upon the people, will be found to be acceptable to the Commons :—

(i) **By omission of privilege provisions on third reading.**—In such a case, the bill is presented and printed, containing the necessary provisions for giving full effect to the intention of the bill, and is considered and discussed in the Lords in that form. On the third reading

(*t*) 8 March, 1692, C. J. (1688-93) 845 ; 3 Hatsell, 126, 134.

(*u*) C. J. (1830-31) 477 ; *ibid.* (1849) 557.

(*a*) C. J. (1857-58) 348.

the provisions infringing the privileges of the Commons are struck out (*b*) ; and the bill, reprinted with blank spaces to mark their omission, is sent to the Commons in that form. The bill is then printed by the Commons containing the omitted provisions, formerly printed in red ink, but now marked by underlines and brackets, and with a note stating that these provisions have been left out to avoid questions of privilege. As these provisions ostensibly form no part of the bill received from the House of Lords, no privilege is violated ; whilst by this convenient device the bill when reprinted by the Commons contains every provision necessary for giving it full effect ; and in committee the privilege provisions, if approved of, are formally inserted. Every session shows examples of the employment of this expedient, which does not therefore require detailed illustration (*c*).

(ii) **By the form of the bill.**—The same purpose is met occasionally by the form of drafting of the bill when the privilege provisions cannot be conveniently disentangled from the rest of the bill. The method usually adopted in such cases is for the Lords to insert words nullifying the effect of the provisions involving charges, and for the Commons to print the bill with these words underlined and in brackets, and with a note stating that they were inserted in order to avoid the infringement of privilege (*d*).

A bill to continue the Crime and Outrage (Ireland) Act, 1854, was introduced in the Lords, but as the Act contained sections which authorized charges upon the county cess and the Consolidated Fund, a clause was inserted which excepted those sections from the operation of the bill. This exception was omitted by the Commons, and thus the entire Act was continued.

In the case of the Irish Land Law Bill, 1887, which was introduced in the Lords, since, under the Purchase of Land (Ireland) Act, 1885, and the National Debt and Local Loans Act, 1887 (see p. 765), advances to tenants are made out of moneys in the hands of the National Debt Commissioners—funds with which the Lords cannot deal—the Lords inserted a subsection in the bill, providing that those advances should be made out of the Irish Church Fund surplus—a fund which, by Act, had been placed at the disposal of Parliament—with a footnote stating that the subsection was inserted by the Lords to avoid a question of privilege, and suggesting its omission. This was done by the Commons ; and the advances consequently came out of funds provided by the National Debt Commissioners, as desired by the Lords.

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(*b*) The Midwives Bill [Lords], 1918, was sent to the Commons with privilege clauses imposing charges on rates which had not, by an omission, been struck out on third reading in the Lords. After the Speaker's attention had been drawn to the matter the Bill was not taken up in the Commons, but a new Bill with the same provisions was introduced in the Commons later in the session, C. J. (1918) 163, 208.

(*c*) Good examples of this practice are afforded by the Burial Grounds Bill, in 1853 ; the Police (Scotland) Bill, in 1857 ; the Probates, etc., Act Amendment Bill, in 1858 ; the Cayman Islands Government Bill, in 1863 ; the British North America Bill, in 1867 ; the Supreme Court of Judicature Bill, in 1873 ; the Rivers Conservancy Bill, in 1879 the Ancient Monuments (Consolidation and Amendment) Bill, 1913 ; and the Superannuation and other Trust Funds (Validation) Bill, in 1927. The Poor Relief Bill, a class of bill formerly not accepted by the Commons from the Lords, was, by the adoption of this method, received and considered by the Commons in 1868, C. J. (1867-68) 262.

(*d*) The Commons, in the session of 1868, refused to strike out a formal provision introduced by the Lords into the West Indies Bill for the purpose of its omission by the Commons, to make way for the substitution of a clause whereby a charge of £2000 a year might be retained upon the Consolidated Fund ; and the provision consequently appears as s. 2 of the West Indies (Salaries) Act, 1868, C. J. (1867-68) 371 (see also p. 719).

In 1916 the Small Holding Colonies Bill, which was introduced in the House of Lords, contained clauses imposing charges upon the Small Holdings Account and the advances made to the Board of Agriculture out of the Development Fund. In deference to the Commons' privileges, the clause in question was struck out of the bill before it left the Lords, and a clause was inserted postponing the exercise of the powers of the Act until financial provision should be made by Parliament. The clause omitted by the Lords was inserted (and their "dummy" clause omitted) during the progress of the bill through the House of Commons and the original financial proposals of the bill were so restored, L. J. (1916) 144, C. J. (1916) 179, H. L. Deb. (1916) 22, c. 375, H. C. Deb. (1916) 85, c. 1466, 1554.

The following instances may also be mentioned :—

In the Government of Burma Bill [Lords], 1921, privilege in connection with increase of salaries to the scale appropriate to Indian Governors' provinces was avoided by the Lords inserting on third reading the words "other than those as to salaries" and leaving it to the Commons to strike out these words, L. J. (1921) 239.

In the Land Drainage (No. 2) Bill [Lords], 1930 (an amending and consolidating bill), as it was impossible to distinguish new matter involving privilege, the Lords inserted a new sub-section to clause 78 "Nothing in this Act shall impose any charge" etc. This sub-section alone was printed in square brackets and underlined with a note that it was inserted to avoid questions of privilege, L. J. (1929-30) 409.

Similarly, in the Food and Drugs Bill [Lords], 1930, a new sub-section to clause 103 was inserted by the Lords, "Nothing in this Act shall impose any charge" etc., to avoid the infringement of privilege, L. J. (1937-38) 283. By inadvertence, the Commons did not leave out these words, which remained in the bill after it had passed all its stages in the Commons; and the error had later to be rectified by the House declaring its proceedings on third reading null and void, and then recommitting the bill in order to omit the sub-section, C. J. (1937-38) 355 and 360.

These expedients are limited to cases where the financial provisions are a subsidiary portion of a bill, and would not be considered justifiable where such provision was the main purpose of a bill, whether it involved a charge upon public funds or merely upon local rates.

## 2. RESTRICTIONS ON THE LORDS' RIGHT TO AMEND BILLS

The Commons' resolution of 1678, cited on p. 764, conceals, in its final clause, a very important distinction between two kinds of amendment by the Lords which, as breaches of privilege, are of very unequal moment in the eyes of the Commons. One of them is often tolerated, the other never. This distinction depends upon a distinction of kind in the bills amended. There is a certain kind of bill which descends from the earliest days of the Commons' history, and is felt by them to embody privilege in its most essential form. This is the "bill of aids and supplies." Its modern counterparts are the Finance Bill for taxation and the Consolidated Fund Bill for expenditure. Any amendment by the Lords of such a bill, whether or not the amendment in itself involves interference with a charge, is regarded by the Commons as an intolerable breach of privilege (*e*). Whereas, in the case of any other bill, to be a breach of privilege, an

(*e*) 3 Hatsell, 153-54.

amendment must in itself involve some interference in a charge ; and such breaches of privilege the Commons feel themselves at liberty to accept, when they choose, with no more than a special record of their reasons for waiving their privilege. The practice is, therefore, treated here under the separate headings :

- (1) Lords' amendments to bills of aids and supplies.
- (2) Lords' amendments to other bills.

#### (1) LORDS' AMENDMENTS TO BILLS OF AIDS AND SUPPLIES

Such bills include, as stated above, the annual Finance and Consolidated Fund Bills.

So completely do the Lords accept the restriction resulting from the Commons' privileges upon their power to amend such bills, that they regularly refrain from going into committee on them. They have in the past preferred to accept a provision for the resumption of Irish grants, tacked to a supply bill of 1700, rather than cut out the provision, and to reject the Finance Bill of 1909 rather than amend it by the excision of the provisions to which they objected.

Since the beginning of the development of modern procedure the two annual bills mentioned above for long covered all the important cases of bills of the nature of bills of aids and supplies. But a recent change in the fiscal system has produced a number of bills imposing customs duties which have all the characteristics of bills of aids and supplies. They originate in Committee of Ways and Means and are drawn with the special enacting formula devised in the seventeenth century for bills of aids and supplies. Whether the Commons would include such bills in the class of bills to which they would regard any amendment as a breach of privilege is a question which has not yet been explicitly decided. In the case of the Lords' amendments to the Safeguarding of Industries Bill, 1921, Mr. Speaker called attention to the fact that these amendments involved privilege and that section six of the Parliament Act reserved the existing rights and privileges of the Commons. Mr. Speaker continued, "It is open to the House . . . to follow the older procedure without derogating from its ultimate powers under the Parliament Act" (f). The amendments were then disagreed to by the Commons and a single reason was given for disagreeing with all the amendments, namely "because the infringe the sole and undoubted right of the Commons to impose taxation (g)."

Similar bills, *e.g.* Abnormal Importations (Customs Duties), Horticultural Products (Emergency Customs Duties), Import Duties, and Ottawa Agreements of Session 1931-32 were passed by the Lords without amendment.

#### PROVISIONS "TACKED" TO BILLS OF AIDS AND SUPPLIES

In former times, the Commons abused their right to grant supplies without interference from the Lords, by tacking to supply bills provisions

(f) H.C. Deb. (1921) 146, c. 1689.

(g) C. J. (1921) 364 ; H. C. Deb. (1921) 146, c. 1695 ; but it was not claimed that the bill could not be amended at all without a breach of privilege nor was the "privilege" reason, strengthened by an assertion of the unconstitutional nature of the action taken by the Lords. See also Report on Tax Bills, H. C. 414 (1860) ; 3 Hatsell, 141, n.

which, in a bill that the Lords had no right to amend, must either have been accepted by them unconsidered, or have caused the rejection of a measure necessary for the public service. This practice infringed the privileges of the Lords, no less than their interference in matters of supply infringes the privileges of the Commons; and has been met by the Lords by standing order No. LII, and by their resolution of the 9th December, 1702—

“That the annexing any clause or clauses to a bill of aid or supply, the matter of which is foreign to, and different from, the matter of the said bill of aid or supply, is unparliamentary, and tends to the destruction of the constitution of the government” (*h*).

On no recent occasion have clauses been irregularly tacked to bills of supply: but, in 1807, acting on the above resolution, the Lords rejected a bill for abolishing fees in the Irish customs, and also the Malt Duties Bill “on account of its containing multifarious matter” (*i*).

As for the modern equivalents of bills of aids and supplies namely, Consolidated Fund and Finance Bills, the rules of order of the House of Commons exclude the possibility of foreign matter being tacked to such bills by way of amendment; and respect for constitutional practice prevents the inclusion of such matters among their original provisions.

## (2) LORDS “PRIVILEGE” AMENDMENTS TO OTHER BILLS

In the case of bills, other than bills of aids and supplies, if the Lords return a bill with amendments which infringe the privileges of the Commons, the action open to the Commons, when the Speaker has called their attention to the breach of privilege, is, according to the nature of the case, either to disagree with the amendments on the ground of privilege, or to agree with them, waiving privilege *pro hac vice*. They need not necessarily, however, be confronted with this choice. For just as in the case of Lords’ bills, so in the case of Lords’ amendments to Commons’ bills (though, it is true, to a less extent), some part of the Commons’ privilege remains in abeyance under standing order, and by the co-operation of both Houses certain expedients are in use for the purpose of avoiding formal infringement of privilege.

**Rejection of privilege amendments.**—When the Lords’ amendments necessitate an assertion of the Commons’ privileges, the disagreement is made on the ground of privilege alone; and in the message to the Lords from the Commons, communicating the reasons for their disagreement, the assertion of this claim usually takes the form of a statement that the amendments would interfere with the public revenue, or affect the levy and application of rates, or involve a charge on public funds, or alter the area of taxation, or alter the financial arrangements made by the Commons, or affect the administration of public funds, or otherwise infringe the privileges of the House, and that the Commons consider that it is unnecessary on their part to offer any further reason,

(*h*) L. J. (1701-5) 185.

(*i*) L. J. (1806-8) 342; C. J. (1806-7) 61; Parl. Deb. (1806-07) 8, c. 427.



hoping that the reason given may be deemed sufficient (*j*). This hint of privilege is generally accepted by the Lords, and the amendment is not insisted upon. On some occasions, however, when the Commons have rejected amendments on the ground of privilege, and have indicated the fact in their formal statement of reasons, the Lords have not insisted on the amendments but have asserted, by a resolution, that they made no admission in respect of any deduction which might be drawn from the reasons offered by the Commons, and did not consent that these reasons should thereafter be drawn into a precedent (*k*).

On the Unemployment Insurance (No. 2) Bill in 1929 the Lords returned a message to the Commons insisting upon certain amendments disagreed to by the Commons on grounds of privilege. Instead of ordering the reasons given by the Lords for insisting on their Amendments to be laid aside, or deferring their consideration for three or six months, which was then held to be the correct procedure, the Commons did not insist on disagreement with the Amendments, but proposed Amendments to certain of them to which the Lords agreed (*l*).

**Acceptance by the Commons of privilege amendments.**—The Commons, when they so wish, "waive privilege" in individual cases, and accept amendments by the Lords, so long as they do not materially infringe the privileges of the Commons. In such cases they justify their action by an entry inserted in the Journal, under direction from the Speaker, which, while implicitly asserting their general rights, explains their motives for not asserting them in the particular instance. Among the reasons given in such entries are :

That the amendments are verbal (*m*), further the intention of the House (*n*), carry out the intention of the Commons (*o*), make clear the intentions of the Commons (*p*), make the provisions of the bill uniform and

(*j*) Naval Prize Balance Bill, C. J. (1850) 491; Tramways (Ireland) Bill, *ibid.* (1860) 477; Juries Bill, *ibid.* (1862) 368; Peace Preservation (Ireland) Bill, *ibid.* (1870) 123; Intoxicating Liquors Licences Suspension Bill, *ibid.* (1871) 432; Parl. Deb. (1871) 208, c. 1736; Erne Loch and River Bill, C. J. (1881) 474; Elementary Education Bill, *ibid.* (1890-91) 507; Local Government (England and Wales) Bill, *ibid.* (1893-94) 677; Local Government (Ireland) Bill, *ibid.* (1898) 408; Licensing Bill, *ibid.* (1904) 417; Labourers (Ireland) Bill, *ibid.* (1906) 401; Housing, Town Planning, etc. Bill, and Development and Road Improvement Funds Bill, *ibid.* (1909) 521, 543; Housing Bill, *ibid.* (1914) 440; Safeguarding of Industries Bill, *ibid.* (1921) 364; Irish Free State (Agreement) Bill, Constabulary (Ireland) Bill and Ecclesiastical Tithe Rentcharge (Rates) Bill, *ibid.* (1922) 92, 322, 328; Housing (Financial Provisions) Bill, *ibid.* (1924) 374; Electricity Supply Bill, *ibid.* (1926) 417; Coal Bill, *ibid.* (1937-38) 348.

(*k*) Elementary Education Bill, L. J. (1890-91) 425, Parl. Deb. (1890-91) 356, c. 1221; Old Age Pensions Bill, L. J. (1908) 345, Parl. Deb. (1908) 193, c. 1077, 1911; Development and Road Improvement Funds Bill, L. J. (1909) 455, H. L. Deb. (1909) 4, c. 1374. See also debates on Safeguarding of Industries Bill, H. L. Deb. (1921) 46, c. 601, 672, 987.

(*l*) C. J. (1929-30) 179; H. C. Deb. (1929-30) 234, c. 1861.

(*m*) C. J. (1867) 426; *ibid.* (1880) 196, 369.

(*n*) C. J. (1861) 205; *ibid.* (1920) 360; *ibid.* (1928) 265; *ibid.* (1928-29) 226, 227; *ibid.* (1929-30) 169.

(*o*) C. J. (1825) 631; *ibid.* (1831) 684; *ibid.* (1865) 449; *ibid.* (1867) 456; *ibid.* (1871) 139; *ibid.* (1881) 453; *ibid.* (1890) 570; *ibid.* (1890-91) 169, 491, 503; *ibid.* (1903) 424; *ibid.* (1917-18) 311, 312; *ibid.* (1918) 204; *ibid.* (1919) 245, 423; *ibid.* (1921) 35; *ibid.* (1922) 320; *ibid.* (1924-25) 284, 385; *ibid.* (1926) 320; *ibid.* (1929-30) 118.

(*p*) C. J. (1928-29) 227.

consistent (q), or make them conform with existing practice (r), or are in accordance with the practice of parliament (s), supply an omission in the bill (t), or rectify an omission made by the Commons (u), provide for laying a minute before both Houses according to the usual practice (a), prevent repetition in the bill (b), are rendered necessary by Acts recently passed (c), or by a section of an Act having become obsolete (d), make provision for special cases not previously contemplated by the Commons (e), or that the amendment does not alter or otherwise affect any valuation or assessment of taxation (f), or alter a duty imposed (g).

The Commons have also stated merely that they were willing to waive their privilege (h).

In the following cases amendments made by the Lords to Bills certified as "Money Bills" under the Parliament Act were agreed to by the Commons:

*Unemployment Assistance (Temporary Provisions) Extension Bill*, 1935-36, as the Lords amendments were merely drafting.

*China Indemnity Bill*, 1925, where, before the Commons had ordered the amendment to be considered, the month specified in section one of the Parliament Act expired; the Commons, however, agreed to the amendment.

### Amendments infringing privilege with respect to local rates.

—The Commons now generally waive their claim regarding amendments made to bills that they have sent to the Lords, dealing with municipal, county, and local rates and assessments; more especially when those amendments affect charges upon the people incidentally only, and are made for the purpose of giving effect to the legislative intentions of the Commons (i). The difficulty also of separating those amendments from other legislative provisions or amendments, to which there was no objection, has frequently prompted their acceptance by the Commons (k).

(q) C. J. (1825) 579; *ibid.* (1852) 230; *ibid.* (1857) 389; *ibid.* (1882) 389; *ibid.* (1896) 383; *ibid.* (1898) 406; *ibid.* (1903) 419; *ibid.* (1919) 425; *ibid.* (1925) 380, 381; *ibid.* (1928-29) 190, 191.

(r) C. J. (1912) 88; *ibid.* (1921) 35.

(s) C. J. (1835) 375; *ibid.* (1836) 823.

(t) C. J. (1857) 389; *ibid.* (1890) 575; *ibid.* (1890-91) 428; *ibid.* (1894) 393; *ibid.* (1902) 524; *ibid.* (1905) 538; *ibid.* (1913) 365; *ibid.* (1919) 423; *ibid.* (1920) 341; *ibid.* (1928-29) 191.

(u) C. J. (1921) 367; *ibid.* (1924-25) 380; *ibid.* (1926) 416.

(a) C. J. (1912-13) 88.

(b) C. J. (1894) 384.

(c) C. J. (1837) 659; *ibid.* (1867-68) 345; *ibid.* (1928-29) 228.

(d) C. J. (1892) 404.

(e) C. J. (1906) 408; *ibid.* (1914) 433; *ibid.* (1916) 259; *ibid.* (1917-18) 312; *ibid.* (1920) 491; *ibid.* (1921) 366; *ibid.* (1922) 320; *ibid.* (1924-25) 341, 380, 465; *ibid.* (1928-29) 227; *ibid.* (1929-30) 118, 119, 293.

(f) C. J. (1857) 418.

(g) C. J. (1826) 388.

(h) C. J. (1911) 427; *ibid.* (1916) 260; *ibid.* (1917-18) 312; *ibid.* (1918) 246; *ibid.* (1920) 307, 376, 381, 514; *ibid.* (1921) 291; *ibid.* (1922) 328; *ibid.* (1924) 373; *ibid.* (1926) 190; *ibid.* (1927) 87; *ibid.* (1928-29) 190, 227, 228; *ibid.* (1929-30) 119, 171, 179; *ibid.* (1936-37) 394.

(i) Prisoners' Removal Bill, 1849; the Lords made the Bill perpetual, instead of being in force for three years. In the Industrial Schools Bill, 1861, the Lords struck out a limitation of the Act, and thereby extended the charge; the Commons agreed to the amendment.

(k) C. J. (1837) 465; *ibid.* (1837-38) 744; Parl. Deb. (1837-38) 44, c. 575; C. J. (1847) 593, 594; Parl. Deb. (1847) 92, c. 1299; *ibid.* (1849) 107, c. 1039; C. J. (1871) 139, etc.

The Commons in dealing with amendments by the Lords to bills for the administration of local and other rates and charges, which touched matters of privilege, have been influenced by recognition of the fact that, if the Lords' amendments dealt with legislative and not fiscal objects, a rigid adherence on the part of the Commons to their privileges might exclude the Lords from the practical consideration of such bills.

The practice appears to have originated in the session of 1838, when the Commons had before them Lords' amendments, many of which dealt with privileged matters. Mr. Speaker Abercromby explained the course which in his judgment should be followed. Speaking as the authorized guardian of the privileges of the House, he remarked, after reference to a precedent which had occurred in the year 1834, that the bill affected "not only the proprietors of the land, but the great mass of the people of Ireland"; and that, "as the principle of rating was necessarily incidental to such a measure, he considered that, if the privileges of this House were strictly pressed in such a case, they would almost tend to prevent the House of Peers from taking such a measure into its consideration in a way that might be, on all grounds, advisable." Influenced by these considerations, as appears by the debates which took place on three occasions, in the years 1838, 1847 and 1849, with the expressed sanction, not only of Mr. Speaker Abercromby, but of Mr. Speaker Shaw Lefevre, the Commons waived the exercise of their privilege, and considered amendments made by the Lords, which, not only by the omission of provisions, but by distinct enactment, changed the area, and therefore the burden, of local taxation, and imposed rates higher than the rates fixed by the House of Commons (*l*). Although the Commons disagreed to certain amendments, which proposed to apply loans drawn from the Consolidated Fund to objects other than those prescribed by the Commons, and to extend the time appointed for the application of the loans, their disagreement was not based on a claim of privilege (*m*).

**Amendments affecting rates in a private bill.**—In like manner, although it is not competent for the Lords, by a private bill, to alter rates leviable under a public Act, the Speaker suggested that a Lords' amendment to that effect, and therefore an amendment which affected the privileges of the Commons, should be accepted, with a special entry upon the Journal to justify and explain the course adopted by the House (*n*).

#### RELAXATION OF PRIVILEGE BY STANDING ORDER IN THE CASE OF LORDS' AMENDMENTS

**Pecuniary penalties and fees.**—The S.O. (No. 44) referred to above (p. 767) which relaxes the Commons' claim to privilege in matters affecting pecuniary penalties and fees applies to amendments made in the Lords as well as to bills originating in the Lords.

(*l*) Parl. Deb. (1837-38) 44, c. 575; *ibid.* (1847) 92, c. 1299, 1306, 1341; *ibid.* (1849), 107, c. 1039. See also the Speaker's rulings on Lords' Amendments to the Housing of the Working Classes Act (1890) Amendment and Local Government (Ireland) Bills. Parl. Deb. (1900) 87, c. 808, 954, 956; Education (England and Wales) Bill, Parl. Deb. (1906) 166, c. 1576; and in the case of the Development and Road Improvement Funds Bill, H. C. Deb. (1909) 13, c. 400.

(*m*) Landed Property (Ireland) Bill, C. J. (1847) 594, 606, Parl. Deb. (1847) 92, c. 1299, 1340.

(*n*) Dublin Corporation Bill, C. J. (1890) 575, Parl. Deb. (1890) 348, c. 964.

This standing order, therefore, relieves the Speaker of the duty of directing the attention of the House to Lords' amendments dealing with the matters to which it applies.

**Local rates.**—S.O. 191, which relaxes the Commons' privileges in respect of private bills sent down from the Lords dealing with local rates, does not apply to Lords' Amendments, dealing with similar matters, made to Commons' bills; but (as stated above) the practice is for the Commons to take no exception to such amendments on grounds of privilege, if they are otherwise acceptable.

#### EXPEDIENTS FOR AVOIDING PRIVILEGE IN LORDS' AMENDMENTS

Expedients commonly in use for avoiding infringement of privilege in Lords' bills have been explained above (see p. 767). In the case of Lords' Amendments to Commons' bills, the expedient, by which words raising questions of privilege are omitted by the Lords but their reinsertion is suggested to the Commons, is inapplicable. But occasionally the same purpose is met by the form of drafting of the amendments.

For instance, when the Lords, by an amendment, extended the Contagious Diseases Prevention Bill, 1846, to Scotland and Ireland, as the bill contained rating clauses, they inserted a clause providing that the rating power conferred by the bill should not be thereby extended. The Commons disagreed to this clause; the Lords did not insist thereon, and thus the whole bill was extended to Scotland and Ireland (o).

### 3. RIGHT TO REJECT BILLS RETAINED BY LORDS

The Lords may reject financial bills without infringing privilege.

As the functions of the House of Lords in the grant or imposition of supply and taxation are reduced to a simple assent or negative (see p. 769) it becomes necessary to examine how far the power of dissent may be exercised without invading the privileges of the Commons. The legal right of the Lords, as a co-ordinate branch of the legislature, to withhold their assent from any bill whatever, to which their concurrence is desired, is unquestionable; and, in former times, their power of rejecting a bill for granting aids or supplies to the Crown had been expressly acknowledged by the Commons (p): but, until the year 1860, though the Lords had rejected numerous bills concerning questions of public policy, in which taxation was incidentally involved, they had respected bills exclusively relating to matters of supply, and ways and means.

#### ADOPTION OF THE PRACTICE OF AN ANNUAL INCLUSIVE FINANCE BILL

Before 1860 it was not unusual for the repeal or imposition of separate classes of duties or taxes to be effected by separate bills, but the rejection by the Lords in that year of the Paper Duties Repeal Bill led the Commons

(o) C. J. (1846) 1290. See also debate on Lords' Amendments to the Local Government (Ireland) Bill, 1898, and the Education Bill, 1902, Parl. Deb. (1898) 63, c. 1029; *ibid.* (1902) 116, c. 1383.

(p) 3 Hatsell, 110-57; May, Const. Hist. i, 379; Report on Tax Bills, H. C. 414 (1860).

to adopt the practice of including all the fiscal changes of each year in a general or composite bill (*q*).

The budget of each year from that year until 1913 was comprised in a general or composite Act, with the technical result that the rejection or restoration of a duty by the Lords would have been an amendment of a bill of aids and supplies—an inadmissible proceeding—instead of its rejection—a right which the Commons still admitted while thus reducing the power of exercising it to a practical impossibility. This proceeding was supported by precedent. In 1787, Mr. Pitt's entire budget was comprised in a single bill; and during many subsequent years great varieties of taxes were imposed and continued in the same Acts (*r*).

#### REJECTION BY LORDS OF SEPARATE FINANCIAL PROVISIONS IN NON-FINANCIAL BILLS

The right of the Lords to reject a bill for granting aids and supplies to the Crown has been held to include a right to omit provisions creating charges upon the people, when such provisions form a separate subject in a bill which the Lords are otherwise entitled to amend. The claim of privilege cannot, therefore, be raised by the Commons regarding amendments to such bills, whereby a whole clause, or series of clauses, has been omitted by the Lords, which, though relating to a charge, and not admitting of amendment, yet concerned a subject separable from the general objects of the bill (*s*).

On the 30 July, 1867, it was very clearly put, by Earl Grey and Viscount Eversley, that the right of the Lords to omit a clause, which they were unable to amend, relating to a separate subject, was equivalent to their right to reject a bill which they could not amend without an infraction of the privileges of the Commons (*t*).

#### LIMITATIONS IMPOSED BY THE PARLIAMENT ACT

The practice of collecting all changes in taxation together and embodying them in a single composite finance bill made it impossible for the Lords to reject such a bill without destroying the financial provision of the year. The situation created by the Lords' rejection of the Finance Bill of

(*q*) See Resolutions, C. J. (1860) 360; Parl. Deb. (1860) 159, c. 1383.

(*r*) 27 Geo. 3, c. 13; 35 Geo. 3, c. 1, etc.

(*s*) Coroners Bill, 1844; District Lunatic Asylums (Ireland) Bill, 1846; Courts of Common Law Bill, 1853 (stamp duty in schedule); Turnpike Trusts Arrangements Bill, 1856 (clauses relating to insolvent trusts); Poor Relief (Ireland) Bill, 1860; Metropolis Local Management Act Amendment Bill, 1862 (clause altering qualification of vestrymen); Corrupt Practices at Elections Bill, 1863 (clause 11, charging costs of commissions upon local rates); Drainage (Ireland) Bill, 1863, Part I, omitted, which comprised many provisions which the Lords could not have amended; Inclosure (No. 2) Bill, 1867, in which the Lords omitted Elsdon, Rochester, Northumberland; Coal Mines Bill, 1930, in which the Lords struck out two clauses relating to the Coal Mines Reorganization Commission; and Agricultural Land (Utilization) Bill, 1931, in which the Lords omitted Part I.

(*t*) Parliamentary Representation Bill (clause 7), Parl. Deb. (1867) 189, c. 415, 417.

1909 (*u*) resulted in the passing of the Parliament Act, 1911, the financial provisions of which are as follows :—

#### PROVISIONS OF THE PARLIAMENT ACT

**Definition of Money Bill.**—A money bill means a public bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation ; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges, supply, the appropriation, receipt, custody, issue or audit of accounts of public money ; the raising or guarantee of any loan or the repayment thereof ; or subordinate matters incidental to those subjects or any of them. For the purposes of this definition the expressions “taxation,” “public money,” and “loan” respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes, matters which, on the other hand, are included within the scope of privilege.

**Procedure in passing money bill.**—A “money bill” which has been passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session, but is not passed by the House of Lords without amendment within one month after it is so sent up, is, unless the House of Commons direct to the contrary (*a*), to be presented to his Majesty and becomes an Act of Parliament on the Royal Assent being signified to it. A “money bill” when it is sent up to the House of Lords, and when it is presented to his Majesty, must be endorsed with the Speaker’s certificate that it is a “money bill.” Before giving this certificate the Speaker is directed to consult, if practicable, those two members of the Chairmen’s Panel (see p. 239) who are appointed for the purpose at the beginning of each session by the Committee of Selection.

When the Speaker (*b*) has certified a bill to be a “money Bill” this is recorded in the Journal by a note attached to the title of the bill ; and such certificate is conclusive for all purposes and may not be questioned in a court of law (*s. 3*).

In view of the precise and concrete terms of the definition contained in the Act, little doubt has hitherto arisen as to whether a particular bill is or is not a “money bill” ; and no criticism whatever has been voiced of the Speaker’s action in giving or withholding his certificate. A bill which contains any of the enumerated matters and nothing besides is indisputably a “money bill.” If it contains any other matters, then, unless these are “subordinate matters incidental to” any of the enumerated matters so contained in the bill, the bill is not a “money bill.”

(*u*) L. J. (1909) 453 ; May, Const. Hist. iii, 353.

(*a*) In the case of a bill which by inadvertence has not been read the third time by the Lords within a month, as required by Section 1 (*x*) of the Parliament Act, 1911, the Commons have ordered that the provisions of the subsection shall not apply, C. J. (1933-34) 272.

(*b*) A bill has been endorsed as being a “money bill” by the Deputy Speaker, C. J. (1914) 453.

The Speaker does not consider the question of certifying a bill until it has reached the form in which it will leave the House of Commons, and has declined to give his opinion as to whether the acceptance of a proposed amendment would prevent a bill from being certified as a money bill (*c*). Similarly in committee the chairman has declined to anticipate the Speaker's decision in this matter or to allow the effect of an amendment in this regard to be raised as a point of order (*d*).

#### THE LORDS IN RELATION TO THE PARLIAMENT ACT AND TO PRIVILEGE

The purpose of Section 1 of the Parliament Act is that the Lords shall be debarred from rejecting or amending "money bills." This is also the result of the Commons' claim to privilege in respect of the modern form of bills of aids and supplies (for though the *rejection* of these is in theory permissible, it has virtually ceased to be practicable). It is worth considering, therefore, whether these two forms of restriction on the powers of the Lords coincide, *i.e.* whether a "money bill" is the same as a bill of aids and supplies, and if not what the difference is.

It may be stated at once that a "money bill" is not the same as a bill of aids and supplies, for included under the former term is the large and increasing class of bills which "impose charges upon the Consolidated Fund or on moneys provided by Parliament." A bill which is exclusively for this purpose is held to be a "money bill." But it is not a bill of aids and supplies. On the other hand a bill of aids and supplies, such as a Finance Bill, is not necessarily a "money bill" for it may and often does include provisions dealing with other subjects than those enumerated in the definition of a "money bill." It is, indeed, more often than not the case that the Speaker's certificate is withheld from a Finance Bill (*e*).

In order to bring the Finance Bill within the definition of a "money bill" under the Parliament Act provisions dealing with subjects that are capable of being included in a Finance Bill but do not fall within the definition have been separated from that bill and embodied in another bill, at the expense of departing from the practice which had been in vogue since 1860 of including the whole financial scheme of the year in one bill. In each of the sessions 1913 and 1914, two bills which were called the Finance Bill and the Revenue Bill respectively, instead of only one bill, were ordered to be brought in upon the budget resolutions of the Committee of Ways and Means when they had been agreed to by the House. In such cases care is taken to include in the Finance Bill only such provisions as are consistent with the definition of a money bill under the Parliament Act, 1911. This course may also be rendered necessary to secure the passage of the bill into law before the expiration of the period during which provisional sanction is given to the collection of certain taxes by the Provisional Collection of Taxes Act, 1913 (see p. 755) (*f*).

(*c*) H. C. Deb. (1912-13) 41, c. 2667. See also *ibid.* (1911) 31, c. 1209.

(*d*) H. C. Deb. (1914-16) 72, c. 1704.

(*e*) It was withheld from the Finance Bill of 1911, the Finance (No. 2) and Finance (No. 3) Bills of 1914-16, and the Finance Bills of 1916, 1917-18, 1918, 1921, 1923, 1924, 1927, 1928, 1930, 1932-37 inclusive, 1939, 1942 and 1944.

(*f*) H. C. Deb. (1914) 64, c. 928.

Section 6 of the Parliament Act provides that "nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons." This practically gives the Commons a choice of proceeding upon Lords' amendments under their privileges or according to the procedure laid down by the Act, and consequently they are free to consider and, if they choose, accept amendments made by the Lords to a certified bill (g). This result follows from the fact that, as stated above, "money bills" include bills, the amendment of which by the Lords is not held by the Commons to be in itself a breach of privilege. But it would not be possible for the Commons, while agreeing to certain amendments made by the Lords to a certified bill and disagreeing to others, to secure the royal assent to the bill under the terms of Section 1 of the Act.

"MONEY BILL" UNDER PARLIAMENT ACT AND IN ORDINARY  
PARLIAMENTARY PHRASEOLOGY

The expression "money bill" which has been given a statutory meaning by the Parliament Act has long been used, and is still used, in the House of Commons in a different sense, which is too well-established to be discontinued. For this reason, wherever in this section the expression is used in the sense given it by the Parliament Act it is printed in inverted commas. The ordinary parliamentary signification of the expression is not very strictly defined. Without inquiring into its earlier meanings, a money bill has meant, since the establishment of modern financial procedure (that is to say for the last hundred years or more), primarily a bill originating in a Committee of the whole House appointed with the royal recommendation. But it is also sometimes used as meaning a bill originating in the Committee of Ways and Means. Thus, in its widest sense, it means a bill the main purpose of which is either to impose a charge upon public funds or to impose a charge upon the people, *i.e.* a tax. It will be seen that the statutory use and the ordinary parliamentary use of the expression overlap rather than coincide. A parliamentary money bill may be certified by the Speaker as a "money bill" if its provisions deal only with the imposition of charges. But it will not be certified if it contains provisions dealing with any other matter except "subordinate matters incidental" to such charges. On the other hand the terms of the statutory definition allow ample opportunity for the certification as "money bills" of bills which do not impose charges and are, therefore, not required to originate in a Committee of the whole House or in Committee of Ways and Means. And, in fact, bills of this kind have been so certified, *e.g.* the Public Buildings Expenses Bill, 1913, and the American Loan Bill of session 1914-6, neither of which was a money bill in the parliamentary sense. But the number of bills which are money bills in both senses of the term is sufficiently large to create the mistaken belief that the term has only one meaning. As the framers of the Parliament Act did not realize the inconvenience of using an established term in a new and partly different sense, the resulting ambiguity must be frankly recognized.



## CHAPTER XXIX

### MISCELLANEOUS MATTERS OF PROCEDURE

In this chapter a description will be given of the procedure relating to the following matters :

1. Formal communications between the King and Parliament.
2. Formal communications (" Messages ") between the Lords and the Commons.
3. The presentation of Public Petitions to the Lords or the Commons.
4. Delegated Legislation.
5. Emergency Procedure.

These departments of procedure require a comparatively modest amount of space for their treatment, and it will be found convenient to combine them as separate and distinct sections in a single chapter.

#### COMMUNICATIONS BETWEEN CROWN AND PARLIAMENT

The contents of this section are concerned only with the formal communications made by the Crown to Parliament as a whole, or to each House separately, and the replies returned by the House ; and also with the methods by which each House on its own initiative communicates with the Crown and the manner in which such communications are acknowledged. These are only the direct and formal methods by which on special occasions communication takes place between the Crown and Parliament. It is hardly necessary to say that constant and uninterrupted cooperation of the closest description, without formal communication, is maintained between the Crown and Parliament, through the presence of Ministers of the Crown in Parliament, and the representation of every department of state in both Houses.

#### THE KING'S PRESENCE IN PARLIAMENT

The King is supposed to be present in the High Court of Parliament, by the same constitutional principle which recognises his presence in other courts (*a*).

The functions which the King, as one of the constituent parts of Parliament, performs in summoning and dissolving Parliament, in opening and closing the session, and in giving his assent to acts of both Houses, have been described in earlier chapters (see pp. 27, 556). But according to

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(*a*) See Hale, *Jurisd, Lords*, c. 1 ; *Fortescue*, c. 8 (by Amons), with note B ; and 2 *Co. Inst.* 186.

modern practice, it is only for the purpose of reading his speech from the throne at the opening of the session that the King is personally present in Parliament. The other royal functions in Parliament, which might constitutionally be performed in person, are now performed by a commission appointed under the great seal. These are occasions at which the whole Parliament, consisting of King, Lords and Commons, is assembled as a unitary body. When the Lords and Commons deliberate as separate Houses, the presence of the Crown would be inconsistent with the freedom of debate. In medieval times, the deliberations of the House of Commons being held in a place outside Parliament, the King was never personally present; but in the House of Lords—the King's Great Council—the presence of the King was at first essential. By the time of Charles II, who revived the practice, the presence of the Crown at debates of the House of Lords had become unusual, and it has never been revived since the death of Queen Anne (*b*).

## COMMUNICATIONS FROM THE CROWN TO PARLIAMENT

### COMMUNICATIONS BY MESSAGES UNDER THE SIGN MANUAL

The mode of communication employed on certain important occasions, such as those mentioned in the next paragraph, is by a written message under the royal sign manual, to either House singly (*c*), or to both Houses separately (*d*). The message is brought by a member of the House, being a Minister of the Crown, or one of the royal household (*e*). In the *House of Lords*, the Peer who is charged with the message acquaints the House from his place, that he has a message under the royal sign manual, which His Majesty had commanded him to deliver to their lordships. The Lord Chancellor then reads the message at length, all the Lords being uncovered; and it is afterwards read, or supposed to be read, again, at the table, by the Clerk (*f*). In the *House of Commons*, the Member who is charged with the message appears at the bar, where he informs the Speaker that he has a message from the King to this House signed by his Majesty, which, on being desired by the Speaker, he brings up to the chair. The message is delivered to the Speaker, who reads it at length, while all the members of the House are uncovered (*g*). A message from the Crown, under the sign manual, is always received by Members uncovered: but this custom does not apply to an answer to an address, or to the speech from the throne when read to the House from the chair (*h*).

**Subjects of such messages.**—Such messages are usually communications in regard to important public events which require the attention

(*b*) Anson I, 330, 331.

(*c*) C. J. (1830-31), 488.

(*d*) L. J. (1834) 958; C. J. (1834) 574.

(*e*) If brought by one of the household, he appears in uniform—in the Lords, in his place; in the Commons, at the bar.

(*f*) L. J. (1834) 958.

(*g*) All the Members present uncovered on the announcement of the death of the German emperor, Frederick, 15 June, 1888.

(*h*) Parl. Deb. (1882) 267, c. 1443; *ibid.* (1884-85) 293, c. 260; H. C. Deb. (1914) 58, c. 1958.

of Parliament (*i*) ; the declaration of a state of emergency (*k*) ; the making of provision for the exercise of the royal authority (*l*) ; the prerogatives, or property of the Crown (*m*) ; provision for the royal family, and other occasions which compel the executive to seek for pecuniary aid from Parliament (see p. 684). They may be regarded, in short, as additions to the royal speech, at the commencement of the session, submitting other matters to the deliberation of Parliament, besides the causes of summonses previously declared.

**Communication to both Houses.**—This analogy between a royal speech and a message under the sign manual is supported by several circumstances common to both. A speech is delivered to both Houses, and every message under the sign manual should also be sent, if practicable, to both Houses ; but when they are accompanied by original papers, they have occasionally been sent to one House only. The more proper and regular course is to deliver them on the same day ; but from the casual circumstance of both Houses not sitting on the same day, or other accidents, it has frequently happened that messages have been delivered on different days (*n*).

#### VERBAL MESSAGES

Another form of communication from the Crown to either House of Parliament, is in the nature of a verbal message, delivered, by command, by a Minister of the Crown, to the House of which he is a member. Verbal messages are most frequently of certain recognized types, adapted to special forms of procedure to which the names " King's pleasure," " King's recommendation " and " King's consent " are given. These are explained below. But verbal messages may also be sent for other purposes (*o*).

**King's pleasure.**—The signification of the King's pleasure is the form employed for communicating to Parliament the King's wishes with regard to certain matters which are mostly of a formal and regularly recurrent nature and connected with the procedure of Parliament. Thus the King's pleasure is signified at the commencement of each Parliament, by the Lord Chancellor, that the Commons should elect a Speaker (see p. 267) ; and when a vacancy in the office of Speaker occurs in the middle of a Parliament, a communication of the same nature is made by a Minister, in the House (see p. 270). His Majesty's pleasure is also signified for the attendance of the Commons in the House of Peers ; in regard to the times at which he appoints to be attended with addresses ; and concerning matters personally affecting the interests of the royal

(*i*) L. J. (1794-6) 186 ; *ibid.* (1802-4) 74 ; C. J. (1826-28) 111.

(*k*) L. J. (1921) 95, 174 ; C. J. (1921), 77, 164 ; *ibid.* (1926) 151, etc.

(*l*) C. J. (1830) 466 ; *ibid.* (1840) 520 ; *ibid.* (1910) 171.

(*m*) C. J. (1834) 189, 574.

(*n*) 2 Hatsell, 366 ; L. J. (1834) 958 ; C. J. (1834) 574 ; L. J. (1850) 368 ; C. J. (1850) 539.

(*o*) Arrest of a Member to be tried by a military court martial, C. J. (1782-84) 479 ; *ibid.* (1940-41) 178 ; attendance of Mr. Speaker as representing the House, at Thanksgiving Service at St. Paul's Cathedral, *ibid.* (1872) 61 ; at Westminster Abbey, *ibid.* (1887) 293 ; at His Majesty's Coronation, *ibid.* (1911) 75 ; *ibid.* (1936-37) 134. For King's consent to appointment of select committee affecting the sovereign, see C. J. (1901) 102.

family (*p*). At the end of a session, also, the royal pleasure is signified, by the Lord Chancellor, that Parliament should be prorogued. Under this head may likewise be included the royal approbation of the Speaker elect, signified by the Lord Chancellor.

**King's recommendation.**—The King's recommendation is a technical form of great importance in financial procedure, as it is required to sanction the proposal of a charge and thus reserves the initiation of expenditure to the Crown. It is signified to the Commons by a Minister of the Crown, on receiving petitions, on motions for the appointment of committees of the whole House, or on motions to be considered in such a committee, when such petitions or motions involve any public expenditure or grant of money not included in the annual estimates, or which would have the effect of releasing or compounding any sum of money owing to the Crown. The forms and rules observed in connection with the signifying of the King's recommendation are stated fully in Chapter XXVI, p. 730.

**King's consent to bills.**—The King's consent is given, by a Privy Councillor, to motions for leave to bring in bills (*q*); or to amendments to bills (*r*), or to bills in any of their stages (*s*), or to instructions to committees on bills (*t*), or to Lords' amendments to bills (*u*).

Various formulæ are employed in order to signify the King's willingness to permit Parliament to deal with bills which affect the interests of the Crown in respect of property or in respect of the royal prerogative. The King's consent is signified to bills which affect the hereditary revenues or personal property or interests of the Crown or the Duchy of Cornwall. When the Prince of Wales is of age his own consent, as Duke of Cornwall, is signified (*a*). In the case of bills which affect the royal prerogatives a more complicated formula is employed, varying slightly to suit the circumstances of each case, and including the statement that the King places his interests at the disposal of Parliament (*b*). The King's consent is signified by a Privy Councillor, but the communication of the fact that the King has placed his interests at the disposal of Parliament is generally made by a Minister of the Crown.

The stage at which communications of either type are made in each House has been in the past almost any stage of a bill's progress. But, according to modern practice, it is usual to defer signifying the King's

(*p*) C. J. (1830–31) 460.

(*q*) C. J. (1851–52) 232; *ibid.* (1852) 142. In 1853, the Queen's consent and recommendation were signified to the Land Revenues Bill, *ibid.* (1852–53) 625.

(*r*) C. J. (1846–47) 843; *ibid.* (1852) 321.

(*s*) Second reading, C. J. (1852–53) 375; *ibid.* (1854–55) 290; third reading, *ibid.* (1923) 238. The Prince of Wales' consent as well as that of the King was signified on the third reading of the Duchy of Lancaster (Application of Capital Moneys) Bill, *ibid.* (1921) 345.

(*t*) Civil List Bill, 1837, C. J. (1837–38) 204.

(*u*) C. J. (1846–47) 892; *ibid.* (1847–48) 729; *ibid.* (1871) 354; *ibid.* (1919) 246; *ibid.* (1935–36) 348.

(*a*) C. J. (1863) 310; *ibid.* (1922) 313.

(*b*) C. J. (1833) 381; *ibid.* (1835) 447; *ibid.* (1836) 427; *ibid.* (1840) 385; *ibid.* (1895) 182; *ibid.* (1898) 285; *ibid.* (1901) 114; *ibid.* (1902) 461; *ibid.* (1903) 340; *ibid.* (1912–13) 442; *ibid.* (1913) 218; *ibid.* (1914) 226; *ibid.* (1934–35) 237. In the case of a motion to direct a measure under the Church of England Assembly (Powers) Act, 1919, to be presented for Royal Assent, C. J. (1924) 222.

consent or his desire to place his interests at the disposal of Parliament until the third reading of a bill, unless the interests involved, particularly those of the royal prerogative, are fundamental to the bill. This distinction is, to a great extent at least, one of convenience. In ordinary cases the communication is deferred to the latest stage in order that account may be taken of any amendment of the bill before the King's consent to the whole bill is given. But if the matters affecting the royal interests form the main or a very important part of a bill, it would be courting waste of time if the permission of the Crown to proceed with the bill were not ascertained at the outset. In such cases, accordingly, the communication from the King is signified at the beginning of the earliest stage of debate—the second reading. The precise point at which it is signified is usually after the motion for the stage of the bill has been moved (and seconded) and before the question has been proposed.

In 1935 the Speaker intimated that he was not prepared to propose the question for the second reading of the Peace Bill unless the requisite communication in respect of the King's interests therein had been made; and in subsequent sessions the printing of the same bill was by the Speaker's direction delayed until an intimation that such a communication would be made had been received. In 1937 the King's consent, as far as his prerogative was concerned, was signified on the reading of the Order for second reading (c).

The Civil List Bills of 1936 and 1937 were, through a Minister of the Crown, recommended to the consideration of the House in respect of provisions enabling his Majesty to assent to arrangements for the payment of certain sums out of the revenues of the Duchy of Cornwall (d).

In the case of bills which have been mentioned in the speech from the throne, no communication is required in respect of the King's interests until the third reading. But the fact that a bill affecting the interests of the Crown has been mentioned in the speech from the throne does not exempt it from the need of such a communication (e).

Where a bill affecting the interests of the Crown has been suffered, through inadvertence, to be read the third time and passed without the royal consent being signified, the proceedings have been declared null and void (f).

*Amendments in committee affecting the Crown.*—As it is for the House, and not for a committee, which cannot receive any communication from the sovereign, to guard the interests of the Crown, no question can arise upon an amendment in committee as to whether the King's consent should be signified before the question is proposed. Many early precedents exist of amendments, which affected the interests of the Crown, being made in committees on bills, and the consent of the Crown being signified at a later stage (g).

(c) C. J. (1937-38) 61. See also Speaker's Ruling, H. C. Deb. (1927) 203, c. 218.

(d) C. J. (1935-36) 212; *ibid.* (1936-37) 264.

(e) Parl. Deb. (1833) 17, c. 966-70; C. J. (1833) 381.

(f) C. J. (1852) 157; *ibid.* (1911) 388, 418.

(g) Offences against Customs and Excise Laws Bill, 12 May, 1736, C. J. (1732-37) 714; Murder of Captain Porteous Bill, 15 June, 1737; *ibid.* (1732-37) 899; Westminster Bridge Bill, 23 March, 1740, *ibid.* (1737-41) 693; Tenure of Ward-holding (Scotland) Bill, 22 May, 1747; *ibid.* (1745-50) 392.

In June, 1874, notice having been given of an amendment in committee on the Valuation of Property Bill, rendering Crown property rateable, doubts arose whether, as the consent of the Crown had not been signified, the question could be put by the chairman upon such amendment; but, after full consideration and review of precedents, it was determined that the chairman was bound to put the question.

*Consent of the Crown withheld.*—The withholding of the King's consent to a bill which requires it, results in the withdrawal of the bill as the relevant question cannot be proposed thereon.

A question of practice arose in the House of Lords, on 1 July, 1844, on the third reading of the St. Asaph and Bangor Dioceses Bill to which the Government had not been instructed to signify the Queen's consent. A select committee was appointed to search for precedents, who reported that there were no precedents: but that the bill belonged to that class to which it had been the usage to give the consent of the Crown before passing the House; and that it had been the custom to receive such consent at various stages (*h*). The consent of the Crown was withheld and the bill was withdrawn. Again in 1866, on the third reading of the Blackwater Bridge Bill, notice being taken that the Queen's consent had not been signified, Mr. Speaker declined to put the question (*i*). In 1868, the Peccage (Ireland) Bill was withdrawn upon the second reading, when it was intimated that ministers would not advise her Majesty to give her consent to the bill at a later stage (*k*).

**Constitutional character of these communications.**—These several forms of communication are recognized as constitutional declarations of the Crown, suggested by the advice of its responsible ministers, by whom they are announced to Parliament in compliance with established usage. They cannot be misconstrued into any interference with the proceedings of Parliament, as some of them are rendered necessary by resolutions of the House of Commons, and all are founded upon parliamentary usage, which both Houses have agreed to observe. This usage is not binding upon Parliament: but if, without the consent of the Crown previously signified, Parliament should dispose of the interests or affect the prerogative of the Crown, the Crown could still protect itself, in a constitutional manner, by the refusal of the royal assent to the bill. It is one of the advantages of this usage, that it obviates the necessity of resorting to the exercise of that prerogative.

It must also be observed that the fact that the Crown signifies its consent to a bill or places its interests at the disposal of Parliament should not be taken to mean that the Crown, through its advisers, approves of the provisions which require its consent, but only that the Crown does not intend that, for lack of its consent, Parliament should be debarred from debating such provisions. If the refusal of the royal assent to a bill were still resorted to, there would be nothing inconsistent in such refusal in the case of a bill to which the royal consent had previously been signified. Still less could Ministers be charged with inconsistency for speaking and voting against a bill in the case of which they had recommended the

(*h*) L. J. (1844) 453, 467, 478; Parl. Deb. (1844) 76, c. 122, 294, 591.

(*i*) C. J. (1866) 423.

(*k*) Parl. Deb. (1868) 191, c. 1564.

signification of the royal consent or the placing of the interests of the Crown at the disposal of Parliament (*l*).

In 1868, the Government being unwilling to advise the Queen to place her interest in the temporalities of the bishoprics and benefices in Ireland at the disposal of Parliament, the House of Commons voted an address to her Majesty, praying that such interest should be placed at their disposal. In reply, the Queen desired that her interest should not stand in the way of the consideration of any measure relating to the Irish Church (*m*), and the bill for suspending appointments to bishoprics and benefices in Ireland was proceeded with and passed by the Commons in opposition to the Ministers of the Crown. A similar course was adopted by the Lords in 1875 in regard to Irish peerages (*n*).

#### ACKNOWLEDGMENT OF MESSAGES FROM THE CROWN

Having enumerated all the accustomed forms in which the royal will is made known to Parliament, it may now be shown, in the same order, in what manner they are severally acknowledged by each House.

**Written messages.**—The forms observed on the meeting and prorogation of Parliament, and the proceedings connected with the address in answer to the royal speech (see p. 275), and the royal assent to bills (see p. 557) have been already described. Messages under the royal sign manual are generally acknowledged by addresses in both Houses, which are presented from one House by the "lords with white staves," *i.e.* the Lord Steward and the Lord Chamberlain; or sometimes by other Lords specially named; and from the other by privy councillors, or members of the royal household, in the same manner as addresses in answer to royal speeches at the opening of Parliament (see p. 276) (*o*). In the Commons, however, it is not always necessary to reply to messages under the sign manual by address; as a prompt provision made by that House (see p. 684), is itself a sufficient acknowledgment of royal communications for pecuniary aid (*p*). Messages, other than messages touching pecuniary aid, such as messages relating to important public events (*q*), or matters connected with the prerogatives, interests, or property of the Crown (*r*), or calling for general legislative measures (*s*), are answered by an address (*t*).

In 1926 messages declaring the existence of a state of emergency within the meaning of the Emergency Powers Act, 1920, were answered in the House of Commons in certain cases by addresses (*u*) of thanks, and in others merely by

(*l*) See Lord Hailsham's statement on Life Peerages Bill [H. L.] 1935, H.L. Deb. (1935) 96, c. 34; see also *ibid.* (1911) 7, c. 773.

(*m*) C. J. (1867-68) 160, 170.

(*n*) L. J. (1875) 338, 372; Parl. Deb. (1875) 225, c. 1210.

(*o*) C. J. (1854) 169; Parl. Deb. (1854) 132, c. 307.

(*p*) In 1931 the reply of the House of Commons to a message under the sign manual expressing the need for additional taxation was to set up the Committee of Ways and Means, C. J. (1930-31) 407.

(*q*) C. J. (1826-28) 114, etc., calling out the reserve force, 1882, *ibid.* (1882) 399.

(*r*) C. J. (1830) 466; *ibid.* (1834) 574; *ibid.* (1840) 520; *ibid.* (1910) 171.

(*s*) C. J. (1830) 214.

(*t*) C. J. (1921) 337, 346.

(*u*) C. J. (1926) 151, 186, 244.

resolving that the regulations made as a result of the emergency should continue in force (a).

Orders for taking a message into consideration, and for resuming an adjourned debate on a motion for an address in answer to a message, have been discharged.

**Verbal messages.**—When the House is informed, by command of the Crown, of the arrest of a Member to be tried by a military court martial (see p. 79), it immediately resolves upon an address of thanks to his Majesty, "for his tender regard to the privileges of this House" (b).

An address was also voted in reply to the communication of Lord George Gordon's arrest in 1780 (c). As the arrest of a Member to be tried by a naval court martial does not proceed immediately from the Crown, and the communication is only made from the Lords of the Admiralty (see p. 79), no address is necessary in answer to this indirect form of message.

**On royal pleasure, etc., being signified.**—The matters upon which the royal pleasure is usually signified need no address in answer, as immediate compliance is given by the House; and the recommendation and consent of the Crown, as already explained, are only signified as introductory to proceedings in Parliament, or essential to their progress.

## COMMUNICATIONS TO THE CROWN ORIGINATING IN PARLIAMENT

### ADDRESSES TO THE CROWN

An address to his Majesty is the form ordinarily employed by both Houses of Parliament for making their desires and opinions known to the Crown as well as for the purpose of acknowledging communications proceeding from the Crown.

**Joint addresses.**—Addresses are sometimes agreed upon by both Houses, and jointly presented to the Crown, but are more generally confined to each House singly. When some event of unusual importance (d) makes it desirable to present a joint address, the Lords or Commons, as the case may be, agree to a form of address, and, having left a blank for the insertion of the title of the other House, communicate it (formerly at a conference, but now by message (e)), and desire their concurrence. The blank is filled up by the other House, and a message is returned, acquainting the House with their concurrence, and that the blank has been filled up. Such addresses are presented either by both Houses in a body (f), or by two Peers and four Members of the House of Commons (g); and they have been presented also by committees of

(a) C. J. (1926) 313, 327, 335, 340, 380. The failure to acknowledge by means of an address has occasioned protest in the House, H. C. Deb. (1926) 198, c. 2112.

(b) C. J. (1814-16) 70; *ibid.* (1940-41) 178.

(c) C. J. (1778-80) 903.

(d) C. J. (1831-32) 421; *ibid.* (1834) 232; *ibid.* (1840) 422; *ibid.* (1842) 324.

(e) C. J. (1882) 88; *ibid.* (1906) 276.

(f) C. J. (1831-32) 424; L. J. (1840) 393; *ibid.* (1842) 279.

(g) C. J. (1830) 652; *ibid.* (1882) 94; a joint address having been agreed to, 2 Sept. 1880, when the Queen was at Balmoral, her Majesty dispensed with its formal presentation, see L. J. (1880) 391.



both Houses (*h*); by a joint committee of Lords and Commons (*i*), and by the Lord Chancellor and the Speaker of the House of Commons (*k*). The Lords always learn his Majesty's pleasure, and communicate to the Commons, by message, the time at which he has appointed to be attended.

**Separate addresses.**—In the House of Commons the procedure upon a motion for an address is the same as upon an ordinary substantive motion. It requires notice and admits of debate, amendment and division. Usually, the motion for an address is made in the form "That an humble address be presented to his Majesty to . . ." and the necessary prefatory words are inserted when the actual copy of the address is prepared. An amendment to leave out the word "humble" is not in order (*l*). Sometimes addresses are agreed to upon the report of Committees of the whole House, not only in relation to matters involving public expenditure, but concerning other public affairs (*m*). Addresses or resolutions are ordered to be presented by the whole House (*n*); by the lords with white staves (*o*), or by privy councillors, or members of the royal household (*p*); and, in some peculiar cases, by Members specially nominated (*q*).

**Subjects of addresses.**—The subjects upon which addresses are presented are too varied to admit of enumeration. They have comprised every matter of foreign (*r*) or domestic policy (*s*); the administration of justice (*t*); the expression of congratulation or condolence (which is agreed to *nemine dissente* by the Lords and *nemine contradicente* by the Commons) (*u*); and, in short, representations upon all

(*h*) C. J. (1547-1628) 877.

(*i*) C. J. (1640-42) 462.

(*k*) C. J. (1708-11) 54.

(*l*) H. C. Deb. (1918) 103, c. 112.

(*m*) State of the nation, 22 Dec. 1783, C. J. (1782-84) 848, 855; defence of the kingdom, 20 June, 1803; *ibid.* (1802-3) 528, &c.

(*n*) C. J. (1857-58) 31; *ibid.* (1861) 16; L. J. (1897) 255; C. J. (1918) 250.

(*o*) L. J. (1897) 6.

(*p*) C. J. (1904) 226.

(*q*) C. J. (1688-93) 295; *ibid.* (1812) 391 (after motion for presentation by whole House withdrawn, and for presentation by privy councillors negated).

(*r*) C. J. (1823) 278; *ibid.* (1826-28) 114; *ibid.* (1833) 471; assassination of President Lincoln, 1865, C. J. (1865) 229; invasion of Belgium, 1914, L. J. (1914) 402; C. J. (1914) 449.

(*s*) C. J. (1830) 472, 653; appointment of a royal commission with power to examine witnesses on oath, C. J. (1888) 46 (as to the administration of an oath by a royal commission, see Todd, ii. 99; Parl. Deb. (1905) 147, c. 1341, and by a tribunal of inquiry appointed at the instance of both Houses of Parliament, see Tribunals of Inquiry (Evidence) Act, 1921; C. J. (1921) 55; L. J. (1922) 46; C. J. (1922) 27; reference of questions of law relating to the alleged disqualification of a Member to the judicial committee of the privy council, C. J. (1912-13) 519.

(*t*) C. J. (1830) 472.

(*u*) C. J. (1850) 508; *ibid.* (1852-53) 371; *ibid.* (1857-58) 31; *ibid.* (1865) 344; *ibid.* (1867) 70; *ibid.* (1867-68) 142, 309. Death of Grand Duchess of Hesse, L. J. (1878-9) 16, C. J. (1878-79) 20. Assassination of the Emperor of Russia, L. J. (1881) 100; C. J. (1881) 130. Death of the Duke of Albany, L. J. (1884) 120; C. J. (1884) 149. Death of Frederick William, German Emperor, L. J. (1888) 230; C. J. (1888) 293. The sympathy of the House was expressed on the death of the Prince Consort (1861), on the death of the Duke of Clarence (1892), and on the death of Prince Henry Maurice of Battenberg (1896), in the address in answer to the royal speech, L. J. (1862) 6; C. J. (1862) 7; L. J. (1892) 7; C. J. (1892) 10; L. J. (1896) 16; C. J. (1896) 13. Marriage of the Duke of York (1893), L. J. (1893-94) 325; C. J. (1893-94) 434. Assassination of the President of the French Republic, L. J. (1894) 189; C. J. (1894) 246. Commemoration of the completion of the sixtieth year of Queen Victoria's reign, L. J. (1897) 255; C. J. (1897)

points connected with the government and welfare of the country ; but they ought not to be presented in relation to any bill depending in either House of Parliament (*a*). Frequent occasion for moving addresses is afforded by provisions, of the same general type, contained in many recent statutes, which prescribe the methods by which parliamentary control is exercised over orders or regulations made under the authority of the respective statutes by the Privy Council, public departments or other authorities. When the method of control is the approval by each House of an order, subject to such amendments as it thinks fit to make, a certain difficulty exists in securing that the amendments made by each House are identical (see p. 807).

#### MODE OF PRESENTATION OF ADDRESSES

**Joint addresses.**—When a joint address is to be presented by both Houses, the Lord Chancellor and the House of Lords, and the Speaker and the House of Commons, proceed in state to the palace at the time appointed. On reaching the palace, the two Houses assemble in a chamber adjoining the throne room, and when his Majesty is prepared to receive them, the doors are thrown open, and the Lord Chancellor and the Speaker (*b*) advance side by side, followed by the members of the two Houses respectively, and are conducted towards the throne by the Lord Chamberlain. The Lord Chancellor reads the address, and on his knee presents it, his Majesty returns an answer, and both Houses retire from the royal presence.

**Separate addresses.**—When addresses are presented separately, by either House, the forms observed are similar to those already described, except that the addresses of the Commons are read by their Speaker.

299 (on division). Assassination of the King of Italy, L. J. (1900) 378 ; C. J. (1900) 366. Death of the Duke of Saxe-Coburg and Gotha, Duke of Edinburgh, L. J. (1900) 385 ; C. J. (1900) 380. To King Edward VII. on the death of Queen Victoria and his accession to the throne, L. J. (1901) 8 ; C. J. (1901) 6. Death of the German Empress Frederick L. J. (1901) 357 ; C. J. (1901) 378. Assassination of the King of Portugal and the Duke of Braganza, L. J. (1908) 30 ; C. J. (1908) 25. To King George V on the death of King Edward VII and his accession to the throne, L. J. (1910) 128 ; C. J. (1910) 153 ; and on the occasion of his Silver Jubilee (1935), L. J. (1934-35) 161 ; C. J. (1934-35) 190. Death of the King of Denmark, L. J. (1912-13) 132 ; C. J. (1912-13) 167. Death of the Emperor of Japan, L. J. (1912-13) 244 ; C. J. (1912-13) 321. Assassination of the King of the Hellenes, L. J. (1913) 40 ; C. J. (1913) 31. Assassination of the Archduke Francis Ferdinand and his Consort, L. J. (1914) 247 ; C. J. (1914) 303. Death of the Duchess of Connaught, L. J. (1917-18) 63 ; C. J. (1917-18) 45. To King George V and Queen Mary in connection with the twenty-fifth anniversary of their wedding, L. J. (1918) 165 ; C. J. (1918) 150. Conclusion of an armistice with Germany, L. J. (1918) 291 ; C. J. (1918) 250. Death of Princess Christian, L. J. (1923) 173 ; C. J. (1923) 204. Death of Queen Alexandra, L. J. (1924-25) 389 ; C. J. (1924-25) 409. Death of Emperor of Japan, L. J. (1927) 22 ; C. J. (1927) 12. Death of Princess Royal, L. J. (1930-31) 83 ; C. J. (1930-31) 83. Assassination of French President, L. J. (1931-32) 176 ; C. J. (1931-32) 192. Death of King of the Belgians, L. J. (1933-34) 74 ; C. J. (1933-34) 79. Death of Princess Victoria, L. J. (1935-36) 23 ; C. J. (1935-36) 24. To King Edward VIII on his accession to the throne, L. J. (1935-36) 61 ; C. J. (1935-36) 54. To King George VI on his accession to the throne, L. J. (1936-37) 63 ; C. J. (1936-37) 60. Death of King of Egypt, L. J. (1935-36) 181 ; C. J. (1935-36) 203. On the occasion of an explosion in the French Chamber of Deputies, the Speaker was instructed to communicate the sympathy of the House to the President of the Chamber, 11 December, 1893, C. J. (1893-94) 621 ; Parl. Deb. (1893-94) 19, c. 1050, 1178, 1617.

(*a*) L. J. (1666-75) 72, 81, 88 ; C. J. (1660-67) 670 ; 1 Grey. Deb. 5.

(*b*) The Speaker is always on the left hand of the Chancellor.

In November, 1918, the King appointed the Royal Gallery of the Palace of Westminster as the place in which he would be attended with the addresses of both Houses with regard to the armistice with Germany. The Houses proceeded there at the appointed time and awaited the arrival of his Majesty, who after the addresses had been presented in the usual manner made a speech in answer thereto (*c*). On the occasion of the Silver Jubilee of King George V, each House resolved to present an address of congratulation, the terms of which were conveyed in speeches made by the Speaker of each House to his Majesty in Westminster Hall, the Speakers' words being afterwards entered in the Journals (*d*).

In presenting the address, the mover of the address in the Lords is on the right hand of the Lord Chancellor, and the seconder on his left: while the mover and seconder of the address in the Commons are on the left hand of the Speaker. When the Lord Chancellor or Speaker has read the address, he presents it to his Majesty, kneeling upon one knee. The Lords attend his Majesty in levée dress: but the members of the House of Commons can assert their privilege of freedom of access to the throne, by accompanying the Speaker in their ordinary attire (*e*) (see pp. 85-6).

#### ANSWERS TO ADDRESSES

When addresses have been presented by the whole House, the Lord Chancellor in one House, and the Speaker in the other, report the answer of his Majesty; but when they have been presented in the ordinary way, the answer is reported generally, in the Lords, by the Lord Chamberlain, in levée dress, with his white staff; and in the Commons, by one of the royal household, who appears at the bar in uniform and, on being called by the Speaker, reads his Majesty's answer (*f*).

#### RESOLUTIONS COMMUNICATED

Another mode of communication with the Crown, less direct and formal than an address, has been occasionally adopted; when resolutions of the House (*g*), and resolutions and evidence taken before a committee (*h*), have been ordered to be laid before the sovereign. In such cases the resolutions have been presented in the same manner as addresses, and answers have sometimes been returned (*i*).

#### MESSAGES TO THE ROYAL FAMILY

It is to the reigning sovereign, or regent, alone that addresses are presented by Parliament; but messages are frequently sent by both

(*c*) L. J. (1918) 291, 293; C. J. (1918) 251; H. L. Deb. (1918) 32, c. 167, 199; H. C. Deb. (1918) 110, c. 3238.

(*d*) L. J. (1934-35) 161, 163-64; C. J. (1934-35) 190, 191.

(*e*) Parl. Deb. (1897) 50, c. 456. They are not permitted to enter the royal presence with sticks or umbrellas, see 2 Hatsell, 390, *n*.; Colchester, iii. 604-607.

(*f*) The proceedings of the House have sometimes been interrupted to receive the sovereign's answer, C. J. (1852-53) 438; *ibid.* (1878-79) 23. On 19 November, 1914, the King's answer was reported by a privy councillor who appeared at the bar in uniform, C. J. (1914-16) 15.

(*g*) C. J. (1778-80) 330; *ibid.* (1782-84) 884; *ibid.* (1784-85) 1157; *ibid.* (1805-6) 206; *ibid.* (1812) 462; *ibid.* (1823) 316.

(*h*) C. J. (1835) 534.

(*i*) C. J. (1782-84) 885; *ibid.* (1805-6) 211.

Houses to members of the royal family, to congratulate them upon their nuptials or other auspicious events (*k*); or to condole with them on family bereavements (*l*). Resolutions have also been ordered to be laid before members of the royal family. Certain Members are always nominated by the House to present the messages or resolutions; one of whom afterwards acquaints the House (in the Lords, in his place or at the table; and, in the Commons, at the bar) with the answers which were returned (*m*).

**Communications from the royal family.**—Communications are also made to both Houses by members of the royal family, which are either delivered by Members in their places (*n*), or are conveyed to the House by letters addressed to the Speaker (*o*).

## COMMUNICATIONS BETWEEN THE LORDS AND THE COMMONS

### VARIOUS MODES OF COMMUNICATION

The two Houses of Parliament have frequent occasion to communicate with each other, not only in regard to bills which require the assent of both Houses, but with reference to other matters connected with the proceedings of Parliament. The modes of communication are: by message; by conference; by joint committees; and by select committees of both Houses communicating with each other (see p. 631). Communication by message only is considered in this section, as communication by joint committees and by select committees communicating with each other is more conveniently dealt with in the chapter on committees (Chap. XXI). The method of conference has become virtually obsolete in modern procedure, but is briefly described below (see p. 792). Other means of communication, and disagreements arising thereon, are also referred to (see p. 793).

#### MESSAGES

A message is the most simple and frequent mode of communication; it is daily resorted to, for sending bills from one House to another; for requesting the attendance of witnesses; for the interchange of reports and other documents; and for communicating all matters of an ordinary description, which occur in the course of parliamentary proceedings.

#### METHOD OF SENDING MESSAGES

**Former method.**—An important change in the form of sending messages was introduced in 1855; but as the former practice is still recog-

(*k*) L. J. (1794-96) 584; *ibid.* (1840) 53; *ibid.* (1842) 6; C. J. (1818) 424; *ibid.* (1840) 88; *ibid.* (1893-94) 434.

(*l*) L. J. (1820) 367; C. J. (1819-20) 480; *ibid.* (1837) 493 (the Queen Dowager); *ibid.* (1850) 508. To the Duke of Connaught, L. J. (1917-18) 63; C. J. (1917-18) 45; to Queen Mary, C. J. (1935-36) 54, &c.

(*m*) L. J. (1820) 369; *ibid.* (1840) 53; *ibid.* (1910-11) 144; C. J. (1840) 95; *ibid.* (1917-18) 48. In the case of the messages of condolence to the German Empress in 1888 and to the Duchess of Saxe-Coburg and Gotha, Duchess of Edinburgh, in 1900, the Speaker was directed to communicate the messages to her Majesty's ministers resident at their courts for presentation, C. J. (1888) 293; L. J. (1900) 398; C. J. (1900) 380.

(*n*) C. J. (1802-3) 211; *ibid.* (1819-20) 288.

(*o*) C. J. (1809) 86; *ibid.* (1812-13) 253; *ibid.* (1813-14) 324, 433.

nized by the orders of both Houses, it may be convenient to describe it. Prior to 1847, the Lords sent messages by the masters in chancery, their attendants, or on special occasions, by their assistants, the judges (*p*), and until 1855 the Commons sent messages to the Lords by one of their own members (generally the Chairman of the Committee of Ways and Means, or a Member who had charge of a bill), who was generally accompanied by thirty or forty Members (*q*).

**Present method.**—Inconvenience was caused by observance of these usages ; and in 1855, the present method of communication between the two Houses was adopted. On 24 May, 1855, resolutions, which had been communicated by the Lords at a conference, were agreed to by the Commons, whereby it was arranged that one of the Clerks of either House might be the bearer of messages from the one to the other ; and that the reception of the messages should not, of necessity, interrupt the business then proceeding (*r*).

**Reception of a message.**—The reception of a message, as a rule, occasions no interruption, though the business of the House that is in course of transaction when a message is received, is occasionally interrupted (*s*).

**Normal procedure in Commons.**—In the Commons the reception of a message from the Lords is always recorded in the Votes and Proceedings and the Journal, and any action required to be taken is normally set down for a subsequent day. Notice is generally given of the proceedings to be taken. If the matter of the Lords' message concerns a bill, these proceedings are set down as an order of the day (see p. 362). Proceedings on other matters are set down as notices of motions.

**Lords' messages communicated forthwith.**—If it is necessary to proceed upon a Lords' message on the day of its reception, the Speaker informs the House between the orders of the day (or may even interrupt the business under discussion) of the receipt of a message from the Lords, whereupon, the House having ordered the Lords' message to be read and considered forthwith, motions are made, and questions put from the chair which arise upon its consideration (see p. 546).

#### CONFERENCES BETWEEN LORDS AND COMMONS

Until the middle of last century conferences formed a regular method of communication between the two Houses (*t*). The usual form was for managers representing each House to meet, deliver a communication in writing and disperse without debate. But there was also another form of conference called a "free conference" at which discussion was permitted. Both these forms have fallen into disuse. As concerns ordinary conferences, both Houses agreed to substitute messages for

(*p*) Messages touching bills relating to the Crown or royal family were formerly sent to the Commons by two judges, C. J. (1825-26) 573 ; *ibid.* (1830-31) 514, 805. The last occasion when the Lords observed this custom took place in the year 1871, Princess Louise's Annuity Bill ; *ibid.* (1871) 57.

(*q*) D'Ewes, 447 ; Hakewel, 176.

(*r*) C. J. (1854-55) 254.

(*s*) C. J. (1871) 57.

(*t*) For a full description of the procedure, see Hatsell, Vol 4, p. 1 *et seq.*

conferences in respect of one of their chief uses—the communication of reasons for disagreeing to amendments to bills—unless a conference were preferred (*u*). The last conference that has been held between the two Houses on any subject appears to have been that for communicating the subject-matter of an address relative to the French commercial treaty of 1860 (*a*). Free conferences, at which debate was permitted, fell into disuse earlier than ordinary conferences. Only one has been held since 1740 (*b*).

#### OTHER RELATIONS BETWEEN LORDS AND COMMONS

A few words may be added concerning other means of communication between the two Houses, less open and ostensible than those already described. The representation of the executive government in both Houses by ministers, who have a common responsibility for the measures and policy of the state, secures uniformity in the direction of the counsels of these independent bodies. Every public question is presented to them both, from the same point of view; the judgment of the Cabinet, and the sentiments of the political party which they represent, are adequately expressed in each House; and a general agreement is thus attained, which no formal communications could effect. The organization of parties also exercises a marked influence upon the relations of the two Houses. When ministers are able to command a majority in the Lords as well as in the Commons, concord is assured. The views of the dominant party are carried out spontaneously in both Houses, as if they were a single chamber, but when ministers enjoying the confidence of the majority of the Commons are opposed by a majority of the Lords, it is difficult to avert frequent disagreements between the two Houses. The policy approved by one party is condemned by the other, and the minority in the Commons naturally look for the support of the majority in the Lords. Hence the decisions of one House are often contested by the other. When this conflict of opinion arises upon a bill, the proceedings which ensue have already been explained. When it arises upon a question of policy or administration, the course pursued is, in great measure, determined by the character of the difference. The two Houses may differ upon abstract questions without any grave consequences. If the policy of the government is condemned, or their conduct censured, or legislation arrested in one House, however, it is natural that the other should be ready with resolutions in support of the case of which it approves.

Thus, in the great Reform crisis of 1831-32, the Commons supported the ministers and their cause, when they were imperilled by the hostility of the Lords (May, 1 *Const. Hist.*, 97).

In 1860, the Lords having rejected a bill for the abolition of the paper duties, the Commons responded by resolutions reasserting their privileges in regard to bills relating to taxation and supply (see p. 764).

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(*u*) C. J. (1851) 210, 217, 223. Only one conference on amendments has since been held, Oaths Bill, C. J. (1858) 182.

(*a*) C. J. (1860) 125, 126.

(*b*) In 1836 on the Municipal Corporations Bill, C. J. (1836) 783. It was a failure.

In 1885, the Lords carried a vote of censure upon the policy of the Government in regard to Egypt and the Soudan, but similar proposals were defeated in the House of Commons (*c*).

In 1909, the Lords having declined to pass the Finance Bill, the Commons resolved that their action was a breach of the constitution and an usurpation of the rights of the Commons (*d*) (see p. 764).

In 1911, a motion, declaring that the advice given by ministers to the King, whereby they obtained a pledge that a sufficient number of peers would be created to pass the Parliament Bill, was a gross violation of constitutional liberty, was agreed to by the Lords but negatived by the Commons (*e*).

In 1914, an amendment to the address, declaring the inexpediency of proceeding further with the Government of Ireland Bill until it had been submitted to the judgment of the people, was carried in the Lords and rejected by the Commons (*f*).

In 1922, a motion declaring that the mandate for Palestine in the form in which it had been presented to Parliament was unacceptable was agreed to by the Lords, but the House of Commons signified its acceptance of the mandate by rejecting an amendment for the reduction of the salary of the Secretary of State for the Colonies, moved for the purpose of securing the submission of the mandate to the judgment of the House of Commons (*g*).

In 1924, the House of Lords agreed to a resolution regretting the decision of the Government not to proceed with the development of the naval base at Singapore, while in the House of Commons an amendment in committee of supply on the Navy Estimates to the vote for Works, Buildings and Repairs, moved with the object of taking exception to the policy of the Government in the matter, was negatived (*h*).

## PUBLIC PETITIONS

### COURSE OF DEVELOPMENT OF THE FORM OF PETITIONING

The right of petitioning the Crown and Parliament for redress of grievances is acknowledged as a fundamental principle of the constitution. It has been uninterruptedly exercised from very early times, and has had a profound effect in determining the main forms of parliamentary procedure. The historical and constitutional aspects of petitions to the King in Parliament which were originally directed to judicial rather than legislative remedies and from which in the mediæval period the form of legislation both by public and private bill was only gradually derived, will not be considered in this work. This section is concerned with the modern form of petitions to one or other of the Houses of Parliament, principally to the Commons, which grew up in the seventeenth century, when Parliament had come to be regarded as a political and legislative body rather than as the highest court of justice. Petitions of this kind deal more with public than individual grievances, and pray usually for an alteration of the general law rather than the redress of private wrongs.

(*c*) L. J. (1884-5) 76, C. J. (1884-5) 69, 71.

(*d*) L. J. (1909) 451, C. J. (1909) 546.

(*e*) L. J. (1911) 381, C. J. (1911) 388.

(*f*) L. J. (1914) 43, C. J. (1914) 20.

(*g*) L. J. (1922) 242, H. L. Deb. (1922) 50, c. 994; C. J. (1922) 246, H. C. Deb. (1922) 156, c. 292, 340.

(*h*) H. L. Deb. (1924) 56, c. 759, 817; C. J. (1924) 106; H. C. Deb. (1924) 171, c. 1181.

The rights of petitioners and the power of the House to deal with petitions were laid down by two resolutions of the Commons in 1669.

"That it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and the House of Commons to receive the same."

"That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how far they are fit and unfit to be received" (*i*).

Until after the first Reform Act the procedure of the House of Commons imposed little restriction on the raising of debate on the presentation of petitions, which served as a method of introducing subjects from outside the House and could be used for obstructing other kinds of business. In view of the great increase of the number of petitions a series of standing orders—now Nos. 75 to 78—was adopted in 1942, which, as subsequently amended, made the presentation of petitions a formal proceeding incapable, except in rare cases, of giving rise to debate. This development was in keeping with the change which simultaneously took place in the relations between Parliament and the people as a whole. As the House of Commons grew more representative of all kinds of popular opinion, the need of the channel between the public and the House of Commons, which petitions had supplied, grew less urgent. The number of petitions declined (see p. 802 n. (*f*)) and their purpose changed from the suggestion of remedies which might not otherwise have been advocated in Parliament to approval or criticism of measures initiated in Parliament itself.

The existing practice in regard to petitions will be considered under three headings:

1. The form of petitions;
2. The character and substance of petitions; and
3. Their presentation to Parliament.

#### I. FORM OF PETITIONS

Petitions to the House of Lords should be superscribed, "To the right honourable the lords spiritual and temporal in Parliament assembled" (*k*); and to the House of Commons, "To the honourable the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled." A general designation of the parties to the petition should follow; and if there be one petitioner only, his name after this manner: "The humble petition of [here insert the name or other designation] sheweth." The general allegations of the petition are concluded by what is called the "prayer," in which the particular object of the petitioner is expressed. To the whole petition are generally added these words of form, "And your petitioners, as in duty bound, will ever pray, &c.;" to which are appended the signatures or marks of the parties.

**Remonstrances.**—Without a prayer, a document will not be taken as

(*i*) See 3 Hatsell, 240, n.

(*k*) A petition intended for the last Parliament will not be received; see *Mirror of Parliament*, 1831, vol. 3, p. 2199.



a petition (*l*) ; and a paper, assuming the style of a declaration (*m*), an address of thanks (*n*), or a remonstrance only, without a proper form of prayer, will not be received. In other cases, remonstrances respectfully worded, and concluding with a proper form of prayer, have been received (*o*) : but a document, distinctly headed as a remonstrance, though concluding with a prayer, has been refused (*p*). A so-called memorial, properly worded, and concluding with a prayer, has been received (*q*).

**Signature, etc.**—The petition should be written upon parchment or paper, for a printed (*r*), lithographed (*s*), or type-written (*t*) petition will not be received by the Commons. It must be signed (*u*) and at least one signature should be upon the same sheet or skin upon which the petition is written (*a*). If petitions are presented without any signatures to the sheet on which they are written, they are not noticed in the votes. The petition must have original signatures or marks, and not copies from the original (*b*), nor signatures of agents on behalf of others, except in case of incapacity by sickness (*c*) ; and it must not have letters, affidavits, appendices or other documents annexed (*d*). The signatures must be written upon the petition itself, and not pasted upon, or otherwise transferred to it (*e*). Where a petition consists of more than one sheet only those signatures will be considered valid which are written on sheets headed by the prayer of the petition or on the back of those sheets ; but on every sheet after the first the prayer may be reproduced in print or by other mechanical process (*f*). Petitions of corporations aggregate should be under their common seal. A petition must be in the English language, or accompanied by a translation, which the Member who presents it states to be correct (*g*) ; it must be free from interlineations or erasures (*h*).

**Forgery or fraud.**—Any forgery or fraud in the preparation of petitions, or in the signatures attached, or the being privy to, or cognizant of, such forgery or fraud, is liable to be punished as a breach of privilege (*i*), and is considered and dealt with by the House as a matter of privilege (*k*). There have been frequent instances in which such irregu-

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- (*l*) C. J. (1651-59) 427 ; *ibid.* (1843) 457.  
 (*m*) Parl. Deb. (1842) 60, c. 640.  
 (*n*) Parl. Deb. (1842) 64, c. 423.  
 (*o*) C. J. (1842) 470 ; Parl. Deb. (1842) 65, c. 1225, 1227 ; C. J. (1843) 461 ; Parl. Deb. (1860) 159, c. 761, 1524 ; see also C. J. (1812) 398 ; *ibid.* (1821) 391.  
 (*p*) Parl. Deb. (1843) 70, c. 745.  
 (*q*) Parl. Deb. (1878) 240, c. 1682.  
 (*r*) C. J. (1792-3) 738 ; *ibid.* (1812-13) 624, 648 ; *ibid.* (1817) 128, 156. This rule has not been adopted by the Lords.  
 (*s*) Parl. Deb. (1840) 52, c. 158.  
 (*t*) Parl. Deb. (1897) 50, c. 1297.  
 (*u*) C. J. (1852-53) 541 ; *ibid.* (1859) 325.  
 (*a*) C. J. (1807) 155 ; *ibid.* (1817) 128, 144 ; *ibid.* (1822) 127 ; Parl. Deb. (1843) 66, c. 1032 ; C. J. (1845) 335 ; *ibid.* (1854) 293.  
 (*b*) C. J. (1836) 576.  
 (*c*) C. J. (1667-87) 369, 433 ; *ibid.* (1688-93) 285 ; *ibid.* (1772-74) 800 ; Report, Public Petitions Committee, 1848, *ibid.* (1847-48) 786.  
 (*d*) C. J. (1826) 82 ; *ibid.* (1826-27) 41 ; *ibid.* (1856) 102.  
 (*e*) Special Reports, Public Petitions Committee, C. J. (1849) 283 ; *ibid.* (1850) 79.  
 (*f*) Terms of reference to Public Petitions Committee, Votes and Proceedings, 1st December, 1944. See also below, 804.  
 (*g*) C. J. (1821) 173, 189 ; *ibid.* (1845) 560.  
 (*h*) C. J. (1826-27) 118, 262 ; *ibid.* (1831) 748.  
 (*i*) See resolution, 2 June, 1774, C. J. (1772-74) 800.  
 (*k*) Parl. Deb. (1878) 238, c. 1741.

larities have been discovered and punished by both Houses (*l*). In some cases the House has satisfied itself by the rejection of the petition (*m*), or by discharging the order for its lying on the table (*n*). A motion to that effect has been permitted without previous notice (*o*); though a claim to draw attention, as a matter of privilege, to expressions in a petition presented at a previous sitting, has not been conceded (*p*).

## 2. CHARACTER AND SUBSTANCE OF PETITIONS

The language of a petition should be respectful and temperate and free from disrespectful language to the sovereign (*q*) or offensive imputations upon the character or conduct of Parliament (*r*) or the courts of justice (*s*), or other tribunal (*t*), or constituted authority (*u*); and if objection be taken to a petition upon such a ground, the petition should be read at the table (*a*).

Offensive expressions, not particularly affecting, though addressed to, the House itself will (or may) be regarded as disrespectful to the House (*b*).

The language of a petition may be improper, not because of its being offensive in itself or indecorous in its terms, but because the statements of which it is the vehicle are not proper to be made by the petitioners, as, for example, where a petition refers to anything which may have been said by Members in debate in the House (*c*).

The petition must set forth a case in which the House has jurisdiction to interfere (*d*).

The petition must conclude with a prayer for such interference on the part of the House, or, in other words, for such relief, as is within the power of the House (*e*).

(*l*) Ballinasloe petition (R. Pilkington), 1825, C. J. (1825) 445; Athlone Election petition (T. Flanagan), 1827, *ibid.* (1826-27) 491, 561, 582; *ibid.* (1829) 187; *ibid.* (1834) 92; Epworth petition, 1843, *ibid.* (1843) 523, 528; Liverpool Corporation Waterworks Bill, L. J. (1850), 367, 477; Aylesbury Election petition, 1851, C. J. (1851) 193, 289; Prince Azeem Jah (J. M. Mitchel and others), 1865, *ibid.* (1865), 157, 336; Special Report of Committee on the Glasgow Municipality Extension Bill, 1879, *ibid.* (1878-79) 175, 180; East Gloucester Railway Bill, 1862, L. J. (1862) 300, 321, 378, 386; C. J. (1887) 292, 306, 313.

(*m*) Halifax petition, 1867, C. J. (1867) 345; Special Report of Public Petitions committee, 1872, *ibid.* (1872) 370, 395. In sessions 1893-4 and 1912-13 special reports were made to the House recommending that certain petitions should be rejected, but no action was taken thereon by the House, H. C. 393 (1893-94); C. J. (1893-94) 533 H. C. 401 (1912-13); C. J. (1912-13) 464.

(*n*) Petitions from Dublin against the Sale of Intoxicating Liquors on Sunday (Ireland) Bill, 1878, C. J. (1878) 130, 139, 181, 184. Special Report, Public Petitions committee, 1883, *ibid.* (1883) 153.

(*o*) Parl. Deb. (1876) 228, c. 1400.

(*p*) Parl. Deb. (1867) 187, c. 14.

(*q*) Parl. Deb. (1852) 122, c. 863.

(*r*) C. J. (1826-27) 589; *ibid.* (1829) 275.

(*s*) C. J. (1821) 105.

(*t*) C. J. (1821) 92; *ibid.* (1828) 541.

(*u*) C. J. (1823) 431; *ibid.* (1836) 698.

(*a*) Parl. Deb. (1861) 164, c. 978; *ibid.* (1870) 202, c. 1307.

(*b*) Parl. Deb. (1836) 34, c. 670; *ibid.* (1831) 6, c. 292-94; *ibid.* (1837-38) 40, c. 474-75.

(*c*) Parl. Deb. (1830-31) 3, c. 1734-36; *ibid.* (1819) 40, c. 150-51; *ibid.* (1837-38) 43, c. 192; *ibid.* (1834) 24, c. 1287; *ibid.* (1840), 54, c. 462; *ibid.* (1826) 15, c. 970.

(*d*) Parl. Deb. (1817), 35, c. 173; *ibid.* (1830-31) 2, c. 654-55; *ibid.* (1831-32) 9, c. 1275; *ibid.* (1831-32) 13, c. 1115.

(*e*) Parl. Deb. (1816) 33, c. 215; *ibid.* (1819) 40, c. 910; *ibid.* (1837-38) 40, c. 803.

Where a petition, besides a prayer for relief which is 'not within the power of the House, prays also for that which is within its power, the petition will be received (*f*).

If the prayer of the petition is within the power of the House to grant, the absurdity of it is no objection to the reception of the petition (*g*).

On 2 March, 1822, a petition from Newcastle, imputing notorious corruption to the House of Commons, was, on a division, not received (*h*); and a motion having been made that a petition, alleging that members of Parliament had taken a bribe, do lie upon the table, the motion was withdrawn. On 2 August, 1832, a petition threatening to resist the law was not allowed to lie upon the table (*i*). In 1838, a petition containing disrespectful language towards the other House of Parliament was withdrawn (*k*). In 1840, a petition from J. J. Stockdale was rejected, as containing an intentional and deliberate insult to the House (*l*). On 28 March, 1848, a petition having been brought up and read, objection was taken to a paragraph praying for the abolition of the House of Lords, on the ground that it prayed for a fundamental alteration of the institutions of the country: but the objection, after debate, was not pressed, and the petition, being otherwise temperately expressed, was ordered to lie upon the table (*m*). On 3 May, 1867, a petition in favour of certain Fenian prisoners, expressed in strong but guarded language, was allowed to lie upon the table; and a motion afterwards made for discharging that order was not supported by the House (*n*). On 8 June, 1874, notice being taken that a petition contained offensive imputations upon the conduct of the Public Petitions Committee, it was ordered to be withdrawn (*o*). On 3 July, 1874, notice being taken that a petition contained imputations upon the conduct of certain judges, and statements affecting the social and legal position of individuals, it was ordered to be withdrawn, and the printed copies to be cancelled (*p*). On 12 April, 1875, the Petitions Committee reported that a petition from Prittlewell contained offensive imputations upon the lord chief justice and two of the judges of the Court of Queen's Bench, and reflected, in an unbecoming manner, upon the Speaker and the proceedings of the House; and on 15 April, the order for the petition to lie upon the table was, after discussion, read and discharged (*q*).

A petition may not allude to debates in either House of Parliament (*r*), or to intended motions, if merely announced in debate (*s*): but when notices have been formally given and printed on the notice paper, petitions referring to them are received. The procedure on petitions praying for public money, &c., has already been described (see p. 715). By

(*f*) Parl. Deb. (1836) 33, c. 326.

(*g*) Parl. Deb. (1836) 34, c. 1042-44.

(*h*) Parl. Deb. (1822) 6, c. 1231; 26 June, 1823, *ibid.* (1823) 9, c. 1253; see also debate on a petition praying inquiry into the mismanagement of the Eastern Counties Railway, by Mr. Hudson and two other Members, *ibid.* (1849) 105, c. 581; also the petition alleging fraudulent practices against a Member, C. J. (1861) 364, 377, 381.

(*i*) C. J. (1831-32) 547.

(*k*) C. J. (1837-38) 236.

(*l*) C. J. (1840) 193.

(*m*) C. J. (1847-48) 384; Parl. Deb. (1847-48) 97, c. 1055.

(*n*) C. J. (1867) 294; Parl. Deb. (1867) 186, c. 1929; *ibid.* (1867) 187, c. 1886.

(*o*) C. J. (1874) 209.

(*p*) C. J. (1874) 276.

(*q*) C. J. (1875) 134, 145.

(*r*) C. J. (1822) 150; *ibid.* (1826-27) 604; *ibid.* (1836) 616; *ibid.* (1842) 259; *ibid.* (1847-48) 406, 633; *ibid.* (1850) 160; *ibid.* (1854) 160.

(*s*) C. J. (1830) 107; Parl. Deb. (1842) 63, c. 192; *ibid.* (1851), 114, c. 820.

S.O. No. 79, the usage under which the House refused to entertain petitions against a resolution or bill imposing a tax or duty for the service of the year, was discontinued. In the Lords, a petition relating to a bill before the Commons, which has not yet reached the House, or which has already been thrown out, will not be received.

**Petition from person attainted.**—A petition has been received from persons attainted of treason in circumstances, however, which were too exceptional to establish any principle.

On 18 June, 1849, a petition was offered from W. S. O'Brien and others, attainted of treason, praying to be heard by counsel against the Transportation for Treason (Ireland) Bill. It was objected that no petition could be received from persons civilly dead : but the House, after debate, agreed, in the peculiar and exceptional circumstances of the case, to receive the petition. The petitioners' sentence of death had been commuted to transportation ; they had denied the legal power of the lord-lieutenant to transport them, and the bill against which they had petitioned was introduced in order to remove doubts upon the question which they had raised. It was, in fact, a bill to declare the legality of a sentence which they maintained to be contrary to law. Before the introduction of a bill a petition from W. S. O'Brien, upon the subject of his sentence, had been already received by the House (t).

**Petitions from abroad.**—Petitions from British subjects resident abroad (u) as well as petitions from inhabitants of British colonies having local parliaments have always been received ; and also those of foreigners resident in this country (a). In 1876, when a petition from inhabitants of Boulogne-sur-Mer, several of whom appeared to be British subjects, was offered, a select committee appointed to consider the matter did not advise its reception on the ground that it contained the signatures of French citizens as well as British subjects ; and the petition was rejected (b).

**Receivability of petitions dependent upon the competence of Parliament.**—Although such petitions had never been refused, the receivability of a petition from the inhabitants of a self-governing Dominion (c) has been considered by a joint committee of both Houses, who were of opinion that the question depended upon whether the remedy prayed for was within the constitutional competence of Parliament, taking into account not only the law but also the conventions observed in inter-imperial relations. Neither House took any action on the report of the committee.

In 1935 petitions from the people of the State of Western Australia were presented to the House of Lords and the House of Commons, praying for legislation "to effectuate the withdrawal of the people of Western Australia from the Commonwealth of Australia . . . and the restoration of Western

(t) Parl. Deb. (1851) 106, c. 389.

(u) From British residents in Dresden, Votes and Proceedings (1870) 102 ; Appendix to Votes (1870) 116. From members of British and Foreign Anti-Slavery Society, Cuba, Votes and Proceedings (1874) 661.

(a) Provided that the subject of their complaint relates to the action of British, and not foreign, authorities, Parl. Deb. (1831-32) 13, c. 1115.

(b) H. C. 232 (1876) ; C. J. (1876) 148, 181, 200 ; Parl. Deb. (1876) 228, c. 1411.

(c) A Petition from the inhabitants of Nova Scotia was received in 1868. A Petition from the British Migrants Association of Australia was received in 1932, Votes and Proceedings (1931-32) 263.

Australia to its former status as a separate and distinct self-governing colony in the British Empire." The question whether the petition was "proper to be received" was referred to a joint committee (*d*) which reported that, as the legislative action for which it prayed was beyond the competence of the Parliament of the United Kingdom, the petition was not proper to be received (*e*). The committee based their view on a distinction between the law and the conventions of the constitution, and found that the action prayed for was inconsistent with the latter on the following grounds. (1) It is an established convention that the Parliament of the United Kingdom should not interfere in the affairs of a Dominion or self-governing state or colony save at the request of the Government or Parliament of such Dominion, state or colony. (2) In the present instance the action prayed for was an alteration of the constitution of the Australian Commonwealth—a matter appertaining to the Commonwealth as a whole and not to any one of the component states. (3) But the request for such action came not from the Government or Legislature of the Commonwealth, but from the State of Western Australia, which had no *locus standi* in making the request.

### 3. PRESENTATION OF PETITIONS

**Duty of Members in the presentation of petitions.**—Petitions are to be presented by a member of the House to which they are addressed (*f*), but, as was ruled in *Chaffers v. Goldsmid*, 1894, a Member cannot be compelled to present a petition (1 Q.B. 186). A Member who has not taken the oath or made affirmation cannot present a petition (*g*).

Objection was taken, in March, 1881, to the presentation of a petition by Mr. Bradlaugh, the High Court of Justice having adjudged that the making of an affirmation had not qualified him to sit and vote: but notice of appeal having been given, it was allowed (Parl. Deb. (1881) 259, c. 892). On the 22 June, 1882, he was informed by Mr. Speaker that he could not present a petition until he had taken the oath (C. J. (1882), 295.)

According to established usage the Speaker of the House of Commons does not present petitions to the House. A Member, who presents a petition, must, pursuant to the order of the House, affix his name at the beginning thereof (*h*).

On 6 April, 1876, notice being taken that a Member's name had been affixed to a petition without his authority, the petition was ordered to be withdrawn (*i*); and it has been ruled that the Member's name should be signed by his own hand, and that it is irregular to authorize another person to affix it (*k*).

**Presentation of petitions from the corporation of London.**—Petitions from the corporation of London are presented to the House of Commons by the sheriffs, at the bar (being introduced by the Serjeant

(*d*) L. J. (1934-35) 56; C. J. (1934-35) 103.

(*e*) H. L. 52, 75 (1934-35); H. C. 88 (1934-35).

(*f*) Parl. Deb. (1881) 263, c. 1011. The presentation of petitions is recorded in the Commons' Journal, with a reference to that Report of the Committee on Public Petitions in which they are included, e.g., C. J. (1927) 27.

(*g*) C. J. (1882) 295.

(*h*) C. J. (1884-85) 11; see also resolutions, 20 March, 1833, and 9 May, 1844, *ibid.* (1833) 190; *ibid.* (1844) 284; Parl. Deb. (1844) 74, c. 714.

(*i*) C. J. (1876) 141; Parl. Deb. (1876) 228, c. 1320.

(*k*) Parl. Deb. (1876) 229, c. 586.

with the mace) (*l*), or by one sheriff only, if the other be a member of the House (*m*), or unavoidably absent (*n*).

In 1840, both the sheriffs being in the custody of the Serjeant-at-arms, petitions from the corporation of London were presented at the bar by the lord mayor, an alderman, and several of the common council; by the lord mayor, aldermen, and commons; and by two aldermen, and several members of the common council (*o*). Under a privilege conceded in the year 1813, petitions from the corporation of Dublin may be presented in the same manner, by their lord mayor (*p*); but in view of the grant of self-government to Southern Ireland, it is doubtful whether this right, if claimed, would now be allowed. If the lord mayor should be a Member, he must present the petition in his place as a Member, and not at the bar (*q*). Lord Cochrane proposed to extend this privilege to the lord provost of Edinburgh, but his amendment was lost, Mr. Tierney remarking "that the Scotch were generally thought a prudent people, and the corporation of Edinburgh would know better than to send their provost four hundred miles to present a petition" (*r*).

**Petitions on first day of session.**—Petitions are not received on the first day of a session, when the King's Speech is delivered (see p. 275).

**Presentation of a petition from a Member.**—A Peer or Member may petition the House to which he belongs: but if a Member desires to have a petition from himself presented to the House, he should entrust it to some other Member, as he will not be permitted to present it himself (*s*). This rule, however, does not extend to cases in which a Member presents a petition signed by himself in his representative capacity as chairman of a county council or of any public incorporated body.

**Transmission by post.**—To facilitate the presentation of petitions, they may be transmitted through the post-office, to members of either House, free of postage, provided they be sent without covers, or in covers open at the sides, and do not exceed 32 ounces in weight.

**Irregularities in petitions.**—In both Houses it is the duty of Members to read petitions which are sent to them, before they are presented, lest any violation of the rules of the House should be apparent on the face of them; in which case it is their duty not to offer them to the House. If the Speaker observes, or any Member takes notice of, any irregularity, the Member having charge of the petition does not bring it up, but returns it to the petitioners. If any irregularity escapes detection at this time, but is discovered when the petition is further examined, no entry of its presentation appears in the votes. In other

(*l*) MS. Officers and Usages of the House of Commons, p. 46.

(*m*) C. J. (1835) 506; *ibid.* (1847-48) 123, 331, 731; *ibid.* (1881) 248.

(*n*) C. J. (1820) 213; *ibid.* (1839) 432.

(*o*) C. J. (1840) 43, 82, 198.

(*p*) By resolution, 23 Feb. 1813, C. J. (1812-13) 209; Parl. Deb. (1812-13) 24, c. 698; C. J. (1868-69) 85; *ibid.* (1878-79) 269; *ibid.* (1882) 288; *ibid.* (1888) 109; *ibid.* (1889) 183; (1916) 191.

(*q*) On 1 July, 1850, a petition from the corporation of Dublin was presented by the lord mayor in his place as a Member (wearing his robes). The officers of the corporation, in their robes, were allowed seats below the bar: but having brought the mace into the House, they were desired by the Serjeant to remove it. So again Friday, 14 March, 1851, 6 Feb. 1880, and on several other occasions. MS. Officers and Usages of the House of Commons, p. 46.

(*r*) C. J. (1812-13) 209; Parl. Deb. (1812-13) 24, c. 705.

(*s*) So ruled by Mr. Speaker, 30 Aug. 1841 (Sir Valentine Blake), Parl. Deb. (1841) 59, c. 476; 30 April, 1846 (Sir J. Graham), and 9 July, 1850 (Mr. F. O'Connor).

cases more formal notice is taken of the violation of the rules of the House, and the petitions are not received (*t*); or are ordered to be withdrawn (*u*), or are rejected (*a*). A Member who has reason to believe that the signatures to a petition are genuine, is justified in presenting it, although doubts may have been raised as to their authenticity: but in such cases the attention of the House should be directed to the circumstance (*b*).

## PRESENTATION OF PETITIONS TO THE LORDS

Up to this point the practice of the Lords and Commons is similar; but the forms observed in presenting petitions differ so much that it will be necessary to describe them separately. On 1 May, 1868, it was ordered by the Lords, "That the name of the lord presenting a petition relating to any public matter be written thereon" (*c*), and on 30 May, 1868, "That any lord who presents a petition, shall open it before it be read" (*d*). At the time of presentation the lord may comment upon the petition, and upon the general matters to which it refers; and debate thereon may ensue: but a lord who intends to speak upon a petition, usually gives notice of its presentation. When the petition has been laid upon the table, an entry of that fact is placed on the Lords' Minutes and Journals, with the prayer of the petition; but petitions are rarely printed at length in the journals, unless they relate to proceedings of a judicial character (*e*).

## PRESENTATION OF PETITIONS TO THE COMMONS

It is to the representatives of the people that petitions are chiefly addressed, and to them they were sent in such numbers, that restrictions have been necessarily imposed upon the discussion of their merits. Formerly, the practice of presenting petitions had been generally similar to that of the House of Lords; but the number had so much increased (*f*), and the business of the House was so much interrupted by the debates which arose on receiving petitions (*g*), that standing orders dealing with the matter were adopted in 1842 and 1853 (S.O.s Nos. 75-79). In accordance with these orders, a Member, on the presentation of a petition, may read the prayer and make a statement as to the parties

(*t*) C. J. (1841) 159; *ibid.* (1849) 154; *ibid.* (1850) 160; *ibid.* (1854) 160; *ibid.* (1856) 102.

(*u*) C. J. (1837-38) 236; *ibid.* (1845) 335; *ibid.* (1847-48) 633; *ibid.* (1861) 364 (as containing libellous charges against a member of the House and other parties).

(*a*) C. J. (1841) 193; *ibid.* (1867) 345.

(*b*) Parl. Deb. (1851) 117, c. 399.

(*c*) L. J. (1867-68) 138.

(*d*) L. J. (1865-91) 22.

(*e*) L. J. (1842) 236.

(*f*) In the following five-year periods the number of public petitions presented to the House of Commons was: From 1828 to 1832, 23,283; from 1838 to 1842, 70,072; from 1868 to 1872, 101,573; from 1878 to 1882, 72,850; from 1888 to 1892, 50,141; from 1898 to 1902, 35,646; up to 1907, 27,853; to 1912, 24,414; to 1917, 1,332; to 1922, 245; to 1927, 1,032; to 1931-2, 83; to 1936-7, 878; to 1941-2, 32. 33,742 petitions were presented in session 1893-94, a number only exceeded by the 33,898 of session 1843.

(*g*) In 1833 and 1834, sittings from twelve to three were devoted to petitions and private bills.

from whom it comes, the number of its signatures and its material allegations. If a petition conforms to the rules or practice of the House it is brought to the table by the direction of the Speaker (*h*). No debate is allowed thereon, but the petition may be read by the clerk at the table, if required (*i*).

**Informal method of presenting petitions.**—If he prefers, a Member may present a petition, at any time during the sitting of the House, by placing it in the petition bag kept at the back of the Speaker's chair. Petitions presented before 4 o'clock are entered in the votes of the day on which they are presented; if presented after 4 o'clock, they are entered in the votes of the following day.

**Discussion of petitions relating to present personal grievances.**—In the case of a petition complaining of a present personal grievance, calling, as an urgent necessity, for an immediate remedy, the matter contained in such petition may be brought into discussion on the presentation thereof.

On 14 June, 1844, it was ruled by Mr. Speaker that a petition of parties complaining of their letters having been detained and opened by the post-office, and praying for inquiry, was not of that urgency that entitled it to immediate discussion, especially as notice of its presentation had been given on the previous day, which proved that the matter was such as admitted of delay (*k*): but on 24 June, 1844, debate was allowed on a similar petition of which no previous notice had been given. In the latter case, however, the complaint was that "letters *are* secretly detained and opened;" and thus a "present personal grievance" was alleged, while in the former case a past grievance only had been complained of (*l*). On 5 July, 1855, a petition complaining of the recent misconduct of the police in Hyde Park, and of injuries personally sustained by the petitioners, was held not to justify a debate, as the grievance complained of did not demand an immediate remedy (*m*). On the same ground, the Speaker ruled that a petition presented 1 May, 1890, praying for the appointment of a commission to inquire into the municipal contracts of the borough of Salford, did not come within the operation of S.O. No. 77 (*n*). On 28 May, 1923, the Speaker declined to allow discussion under S.O.-No. 77 of the petitions of various persons who alleged that they had been arrested illegally and deported to Ireland; the petitioners prayed to be heard by counsel at the bar of the House in opposition to the Restoration of Order in Ireland (Indemnity) Bill, by which it was alleged their rights of compensation and redress would be affected, but the bill itself was to be considered that day and afforded an opportunity for the discussion of the subject-matter of their petitions (*o*). Nor, under cover of a motion for the adjournment of the House, will a Member be permitted to bring under discussion the contents of a petition which he would be restrained by the standing order from debating (*p*): but a personal explanation has been

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(*h*) When a petition has been laid upon the table, it is irregular for any Member to remove it, C. J. (1850) 99.

(*i*) Parl. Deb. (1845) 79, c. 496; *ibid.* (1849) 106, c. 300.

(*k*) C. J. (1844) 398; Parl. Deb. (1844) 75, c. 894.

(*l*) Parl. Deb. (1844) 75, c. 1264.

(*m*) Parl. Deb. (1854-55) 139, c. 453.

(*n*) Parl. Deb. (1890) 343, c. 1809.

(*o*) H. C. Deb. (1923) 164, c. 816. See also *ibid.* (1913) 56, c. 2224.

(*p*) 7 July, 1856 (attorney-general and the Bedford charities).



permitted, without any question being before the House, upon matters affecting a Member which have been alluded to in a petition (*q*).

**Petitions affecting privilege.**—Although the standing orders restrict debate to urgent cases, that restriction does not extend to a petition complaining of a matter affecting the privileges of the House, such a case being governed by the general rule that a question of privilege is always entitled to immediate consideration (see p. 357) (*r*). If the matter does not demand the immediate interposition of the House, the course would be to appoint by order that the petition be taken into consideration on a future day, and be printed for the information of the House (*s*).

**Committee on public petitions.**—All public petitions, except petitions regarding a personal grievance if dealt with under S. O. No. 77, or a matter of privilege, are referred to the "Committee on Public Petitions," under whose directions they are classified, and, when necessary, printed at length (*t*). The reports of this committee, printed at intervals during the session, point out, not only the subject of each petition, but the number of signatures to which addresses are affixed, and which are written on sheets headed by the prayer of the petition (*u*), the general object of every petition, and the total number of petitions and the signatures in reference to each subject.

In session 1942-43, following a special report from the committee, the House agreed to allow signatures on the back of the petition sheet and the sheets attached thereto to be counted, whether or not the prayer was repeated at the top of the page, and instructed the committee accordingly (H. C. Deb. (1942-43) 390, c. 1113).

**Printing of petitions.**—Whenever the peculiar arguments and facts or general importance of a petition require it, it is printed at full length in an appendix to the report of the Committee. If a petition relates to a subject with respect to which the Member presenting it has given notice of a motion, and has not been ordered to be printed by the committee, the Member may (under S.O. No. 78), after notice given, move that the petition be printed and circulated with the Votes (*a*). In some cases, petitions have been ordered to be printed with the Votes, with the signatures attached thereto (*b*), and in others for the use of Members only (*c*). A petition has been ordered to be printed for the use of Members only, with the names of the persons who had signed

(*q*) Parl. Deb. (1839) 48, c. 226; *ibid.* (1850) 109, c. 235; and 7 July, 1856.

(*r*) C. J. (1849) 302; *ibid.* (1850) 110; *ibid.* (1857) 231, 232; Parl. Deb. (1857), 146, c. 27, 97; C. J. (1857-58) 68; *ibid.* (1859) 357; *ibid.* (1861) 377, 381; Parl. Deb. (1861) 164, c. 1178; *ibid.* (1862) 168, c. 1855.

(*s*) Parl. Deb. (1846) 86, c. 328; C. J. (1864) 173.

(*t*) C. J. (1833) 95.

(*u*) Pursuant to Special Report, Public Petitions committee, 11 April, 1878, C. J. (1878) 205, and to sessional orders. If the chairman of a public meeting signs a petition on behalf of those assembled, the fact is recorded in the report of the committee.

(*a*) No special priority is given to such a motion, and it is open to debate and objection like any other motion. This order has been made regarding petitions presented in a former session, C. J. (1847) 22, 203; *ibid.* (1857) 155; *ibid.* (1857-58) 331.

(*b*) C. J. (1842) 302; *ibid.* (1843) 396, 460, 549; *ibid.* (1846) 142.

(*c*) C. J. (1845) 538, 648; *ibid.* (1846) 1021; *ibid.* (1850) 45; *ibid.* (1851) 209; *ibid.* (1861) 377.

it (d). Sometimes petitions, which have been already printed, have been ordered to be reprinted (e).

## DELEGATED LEGISLATION

### INTRODUCTORY

As this country does not accept the doctrine of the "separation of powers," *i.e.* the confinement of legislative power to the legislature, of executive power to the executive, and of judicial power to the judiciary, there is here no constitutional impropriety in the practice of delegating legislative power to the executive. The practice indeed is by no means a new development; it has been consciously adopted, with the encouragement of the legislature, by those responsible for the form of our statutes because of its obvious advantages in lightening the load otherwise to be borne by the legislative machine.

Parliament is not always sitting. Even when it is sitting, the law contained in statutes can conveniently be supplemented by departmental rules, regulations and orders within prescribed limits and subject to Parliamentary control. In times of war or other emergencies the interests of security and the services essential to the life of the community can be assured, and unpredictable contingencies can be met, by such comprehensive codes as were sanctioned by the Defence of the Realm Acts, 1914 and 1915, the Emergency Powers Act, 1920 (f), and the Emergency Powers (Defence) Act, 1939. Technicalities can be handled by experts as in the case of the standardization of vaccines and other preparations, governed by regulations made under the Therapeutic Substances Act, 1925. Details that are subsidiary or procedural can be worked out by departments without taking up time on the floor of the House.

In view of criticisms of the extent of departmental law-making, the Lord Chancellor in 1929 appointed the Committee on Ministers' Powers to consider *inter alia* the powers exercised by Ministers by way of delegated legislation. The Committee's report (g) constitutes a valuable survey. Its general conclusion was that the practice of delegation is inevitable and, subject to safeguards, proper.

### STATUTORY RULES AND ORDERS

The departmental exercises of delegated powers of law-making, registered in a calendar year series as directed by section 3 of the Rules Publication Act, 1893, are known as "Statutory Rules and Orders" (abbreviated for summary reference as "S. R. & O."), being rules and orders made under authority of a statute and not under that of the prerogative. These words "rules and orders" here include Orders in Council, regulations, warrants (such as those by which the Postmaster-General prescribes the arrangements for the inland or foreign post),

(d) C. J. (1842) 57.

(e) C. J. (1843) 216; *ibid.* (1847-48) 30.

(f) For the code of regulations, etc., made thereunder during the general strike in 1926, see S. R. & O. 1926, pp. 485-532.

(g) Cmd. 4060 (1932).

or any other instrument, however it be labelled, which, being made by a "rule-making authority" (*i.e.* a Minister, public department or other official body within section 4 of the Rules Publication Act) is "of a legislative and not an executive character" (*h*).

Statutory Rules and Orders are classified, like statutes, as either "general" or "local and personal (*i*)."<sup>1</sup> It is usual to include under "general" those which relate to London. In peace-time the local far outnumber the general S. R. & O., in war-time the general orders predominate.

#### SUB-DELEGATION

During the war of 1939-45 the phenomenon of a three-tier system appeared—first the enabling statute, secondly Orders in Council or regulations made under that statute, often in very wide language, and thirdly orders or other instruments made under the Orders in Council or regulations. This sub-delegation was expressly authorized by the Emergency Powers (Defence) Act, 1939 (s. 1 (2)).

#### PARLIAMENTARY CONTROL

The conditions of the making of Statutory Rules and Orders and the degree of parliamentary control over them will depend in each case upon the particular statute which authorizes them. Sometimes the resultant instrument has no effect, or no continuing effect, until Parliament has expressly approved it; sometimes it can be annulled if, within a time-limit, either House records its disapproval. Thus it may come before the legislature as a mere draft or as an operative document valid until annulled. Sometimes the purport of the instrument is not deemed important enough to need any form of control. Of the various types of parliamentary check one of the more common is a provision in the enabling statute that the regulations, etc., made thereunder shall be laid before Parliament as soon as may be and, if within forty (*k*) sitting days a resolution be passed by either House for their annulment, they shall be annulled. If the enabling Act seeks the maximum of parliamentary control, it will probably direct that the document be laid as a draft and that it have no effect unless approved. If the subject be taxation, the required resolution will be that of the House of Commons only. Thus the Treasury orders altering the rate of purchase tax have no effect until approved by a resolution of the Commons House (*l*), and those which impose customs duties, under s. 19 of the Import Duties Act, 1932, lapse within twenty-eight days unless similarly approved.

(*h*) Reg. 1 of Treasury Regulations made in 1894 under s. 3 (1) of the Rules Publication Act, 1893. The Statutory Instruments Bill, 1945, contemplates the replacement of the 1893 Act and the enactment of a similar power for the Treasury to make regulations.

(*i*) Regs. 4 & 5 of Treasury Regulations of 1894: and see s. 3 (4) of the 1893 Act.

(*k*) The number has varied from ten to a hundred days (see Supreme Court of Judicature (Ireland) Act, 1877, s. 69, at last amended by the Supreme Court (Northern Ireland) Act, 1942, s. 2); a hundred days are not easily obtained in a session of the House of Lords. The Committee on Ministers' Powers recommended standardizing the period as twenty-eight days on which the House has sat: see Cmd. 4060 (1932). The Statutory Instruments Bill, 1945, proposes standardization.

(*l*) Finance (No. 2) Act, 1940, s. 20.

**Laying before Parliament.**—The method of reckoning the prescribed period of days depends upon the terms of the Act which directs the laying. Earlier statutes do not always require that they be days on which the House is sitting; the usual modern formula stipulates that no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. If the period be interrupted by a prorogation, the document must be laid afresh for the full period in the new Parliament. It has been ordered in the Lords that documents required to be laid for a prescribed number of days must be laid in full (*m*). It has been ruled in the Commons that until the full text of the document is laid the days do not begin to run (*n*).

Whether the character of the contemplated control be negative (to obtain annulment of regulations already effective) or affirmative (to bring regulations into force or to prolong their operation), the proceedings, being "made in pursuance of an Act of Parliament," are "exempted business" under Standing Order No. 1 (6) of the House of Commons (see p. 305).

Difficulties arise where the power to approve delegated legislation by parliamentary resolution includes a power to approve it with amendment, since, if the two Houses differ in their amendments, machinery must be improvised for reconciling the differences.

In order to reduce the possibility of conflicting decisions, it was informally agreed, in the case of motions for addresses to approve Orders made under the Government of India Act, 1935, which have to be agreed to and may be amended in each House, that debate on the Address in the Commons should always be adjourned till the Lords Select Committee on India and Burma Orders had reported to the House of Lords. Then, if the Order was amended by the Lords in consequence of such report, the same amendments could be moved in the Commons before the Address was finally agreed to (*o*).

The first step in parliamentary control is the requirement that the document be laid before Parliament, though, if its contents be of minor significance only, the enabling Act may not insist upon this step or may require nothing more.

The practical procedure of laying is as follows. In the House of Lords notice appears in the Minutes of Proceedings, and a separate list, printed fortnightly, informs the peers of the statute under which each paper is so laid, the number of days for which it is required to lie, and the date when it was laid. The papers themselves are available for inspection in the Printed Paper Office. When papers are laid in the House of Commons, notice appears in the daily Votes and Proceedings, and a separate list, published weekly, shows, in regard to those rules and orders against which motions for annulment can be moved within a statutory period, the relevant statute, the number of days and the date of laying. The laying of rules and orders on the Table of the House

(*m*) L. J. (1900) 107.

(*n*) Parl. Deb. (1899) 69, c. 625, 647; *ibid.* (1901) 96, c. 1007; H. C. Deb. (1909) 6, c. 712, 1372; *ibid.* (1910) 17, c. 1315.

(*o*) See L. J. (1935-36) 144, 159; C. J. (1935-36) 152, 170.

of Commons means in practice that the paper is placed in the Library of the House. The document is usually (though not always) laid in duplicate in accordance with a direction of Mr. Speaker. When laid in duplicate, one copy is available for Members' inspection, the other is locked away for safe custody.

**Challenge in Parliament.**—In the House of Lords, apart from moving or supporting a resolution for annulment, a peer can challenge delegated legislation by moving for papers (and divide the House upon the motion), or by asking a question. In the House of Commons, apart from a motion which may be moved as "exempted business," a Member who seeks other occasions of moving a prayer against delegated legislation must succeed in the difficult task of finding time during the ordinary sittings of the House. The opportunities of question-time are freely used for inquiry as to the purpose, meaning or effect of Statutory Rules and Orders. It is not uncommon for a Member, if dissatisfied with an answer, to pursue the matter further on the motion for the adjournment.

Members of both Houses have, of course, such chances as Parliamentary arrangements afford of pressing for the repeal of an enactment under which obnoxious rules and orders are made, or of revoking those rules and orders by statute. Many of the more sharply criticised rules and orders are made under statutes which are temporary; the enabling Act can be attacked when its continuance is proposed.

#### ULTRA VIRES

If the exercise of the rule-making power should go beyond the powers authorised by the enabling Act, the validity of the rules and orders can be contested in the law courts.

#### IMPACT OF STATUTORY RULES AND ORDERS UPON STATUTES

A few examples will illustrate the influence, already remarked, of delegated upon direct legislation. Its flexibility enables it to mitigate a too rigid statutory provision. Thus an early statute (6 Ric. 2, c. 5) fixed the list of assize towns, but soon another (11 Ric. 2, c. 11) allowed the Lord Chancellor to vary the list "notwithstanding the said statute." Experimental laws can be improved; the schedule to the Fertilisers and Feeding Stuffs Act, 1926, could be varied by departmental regulations, even before the Act itself came into force (*p*).

Secondly, a principle enacted in a statute can be extended in some roughly similar direction. The Destructive Imported Animals Act, 1932, aimed at the musk rat, was thus applied to the grey squirrel (*q*).

Thirdly, the operation of a statute can be conveniently adjusted by the device of fixing by order a date for its commencement. A new Act may involve preparatory work during a period of uncertain length. The Act can entrust to the department concerned the responsibility for appointing a day; otherwise another statute will be needed for the purpose.

(*p*) See S. R. & O. 1928, p. 538.

(*q*) See S. R. & O. 1937, p. 658.

Finally, the use of delegated legislation for subsidiary and consequential detail is so common as hardly to require illustration. When the Rating and Valuation Act, 1925, abolished overseers, an Order in Council was able to range over the statute book and declare the authority to be substituted wherever overseers were mentioned (*r*).

Objection has been taken to a form of enabling enactment sometimes called the "Henry VIII Clause," whereby a statute permits the appropriate Minister to modify its provisions so far as may appear to him necessary for the purpose of bringing them into operation. The use of this clause, usually transitory, was specially examined by the Committee on Ministers' Powers (*s*); it is extremely convenient for making minor adjustments to fit a new principle into the fabric of existing legislation, general or local, and to meet cases of hardship to local authorities, but the argument of convenience might obviously be pushed too far.

**Form and Intelligibility.**—Not needing to be fashioned to survive the processes of discussion and amendment to which a Bill is exposed, delegated legislation should be capable of more generous, more orderly and more intelligible statement than a statute. The practice of adding to it explanatory notes has been encouraged in the past few years, though, if freely developed, it introduces risks of repugnancy being discovered between the text itself and the explanatory matter (*t*).

#### MODERN DEVELOPMENTS

The impression that recourse to delegated legislation is progressively increasing can be roughly tested by the statistics of the totals of Statutory Rules and Orders annually registered under the Rules Publication Act. The peak year was 1942 (2937); the next highest total was as long ago as 1920 (2475); the total for 1944 (1483) was exceeded in 1904 and 1912.

Naturally, as the national conception of the function of government has moved towards the regulation of the day-to-day affairs of the community, departmental legislation attracts fresh attention and members of Parliament feel that the powers which they have delegated require organized scrutiny. "The facilities afforded to Parliament to scrutinize and control the exercise of powers delegated to Ministers," reported the Committee on Ministers' Powers in 1932, "are inadequate; there is a danger that the servant may be transformed into the master."

In 1924 the House of Lords, conscious that at any rate those rules and orders which require an affirmative resolution ought not to be passed as a mere formality, set up a "Special Orders Procedure," so that a sessional committee of the House examine them and report, in effect, whether the provisions raise important questions of policy or principle, how far they are founded on precedent, and whether there should be any further inquiry before the resolution is moved.

In the sessions of 1943-4 and 1944-5 the House of Commons constituted a Select Committee to scrutinize all Statutory Rules and Orders (and drafts intended to become Statutory Rules and Orders) which

(*r*) See s. 62 of the Act, and S. R. & O. 1927, p. 964.

(*s*) Cmd. 4060 (1932), pp. 36-7, and p. 123 Annex II.

(*t*) *Ibid.* p. 66 (recommendation 11).

are the subject of proceedings under any Act of Parliament, i.e. those which either require an affirmative resolution or are exposed to annulment on adverse address. This Select Committee's order of reference (*u*) does not empower them to consider merits or policy, but enables them to draw the attention of the House to provisions which (i) impose a charge on the public revenues, (ii) are made under an enactment which excludes challenge in the law courts, (iii) appear to make some unusual or unexpected use of the powers conferred by the statute, (iv) have been withheld from publication by unjustifiable delay, or (v) call for elucidation of their form or purport. This Select Committee like an Unopposed Private Bill Committee, has the assistance of the Speaker's Counsel. Though constituted in deference to criticisms of the scope and quantity of delegated legislation issued under war-time powers, this type of scrutinizing committee may well be found useful in times of peace.

Before leaving the topic of delegation, mention should perhaps be made of the powers conferred upon the Church Assembly, by the Church of England Assembly (Powers) Act, 1919, for proposing legislation "touching matters concerning the Church of England." The stages by which Church Assembly Measures are submitted for the Royal Assent, and thus become law, are briefly outlined in another chapter (see p. 566). The enabling Act does not permit Parliament directly to amend the draft proposals of the Assembly, but, by requiring an affirmative address in each House of Parliament as a condition of presentation for the Royal Assent, gives a power of rejection which was exemplified when the House of Commons twice rejected the Prayer-book Measure (*a*). The Act expressly allows Measures to repeal or amend Acts of Parliament; large-scale repeals of statutes were effected by the Firstfruits and Tenths Measure, 1926, and the New Parishes Measure, 1943.

## EMERGENCY PROCEDURE

### INTRODUCTORY

The period of emergency leading to, or consequent on, the outbreak of war in 1939 led to several modifications of, or innovations in, the normal procedure of Parliament. These modifications have been effected in the Lords mainly by informal agreements or by resolution, in the Commons by Mr. Speaker's instruction or ruling, by sessional order, or by resolutions amending the Standing Orders; or, where both Houses were affected, by statute.

In an emergency, the need to pass legislation (*b*), authorize expenditure or impose taxation in the shortest possible time must sometimes override the practice of the House as described in foregoing chapters. Emergency procedure also includes special arrangements to recall Parliament; the reduction of the gap between prorogation and opening of the new session; the prolongation of Parliament; and provision for

(*u*) See C. J. (1943-44) 135 and Votes and Proceedings, 5 December 1944.

(*a*) C. J. (1927) 378; *ibid.* (1928) 204.

(*b*) See Mr. Speaker's remarks, 28 July 1939, H. C. Deb. (1938-39) 350, c. 1854-5.

the acceptance of notices and questions during adjournments of the House of Commons.

In one or two cases these innovations had been resorted to in the years of crisis before the war of 1939-45 broke out, and some have been continued as modifications of the normal rules of procedure described in previous chapters. But the bulk of emergency procedure relates to the effective prosecution of the war, including anticipation of enemy action, either directly aimed at, or likely to result from, proceedings in Parliament; such procedure is clearly inapplicable beyond the end of the war, or likely to be again employed except in the event of actual hostilities.

Motions relating to the hours of sitting taken in secret session, for example, and motions respecting procedure in the event of air raids, were agreed to because Parliament was in danger of, and subjected to, direct enemy attack.

Other modifications were allowed because indirect enemy action might be taken. In the Commons, questions to Ministers on service and supply matters, for example, were permitted to be scrutinized in manuscript by the departments, and Members were sometimes asked to consent to their question being withheld from the order paper because the subject-matter might be of value to the enemy.

#### MACHINERY FOR MEETING OF PARLIAMENT IN EMERGENCY

Before the passing of the Parliamentary Electors (War-time Registration) Act, 1943—a temporary measure which cannot in effect outlast the National Registration Act, 1939—the royal Proclamation dissolving Parliament had effect forthwith, and Parliament ceased to exist till the meeting of the new Parliament, the date for which is usually named in the royal Proclamation. The interval between the Proclamation and polling day of about three weeks was extended by the Act of 1943 to about seven and a half weeks to allow preparation of a special register for war-time parliamentary elections, and the Act accordingly reduces the interval to roughly its old proportions by providing that the Proclamation shall fix a future date for the dissolution of Parliament not later than the date when the register comes into force (c).

Another modification designed to meet conditions of emergency is a reduction in the time required for summoning Parliament during prorogation. The Meeting of Parliament Act, 1870, allowed Parliament, when prorogued, to meet not less than six days from the date of a royal Proclamation summoning Parliament; but by s. 34 of the Parliament (Elections and Meeting) Act, 1943, Parliament may meet any day after the date of the Proclamation; this provision is permanent.

#### MACHINERY FOR RECALL OF BOTH HOUSES IN EMERGENCY

The form of motion employed in times of crisis since 1920, to enable the Lord Chancellor or the Speaker to recall the House of Lords or Commons respectively at a date earlier than that fixed for its reassembly, has been described in a previous chapter (p. 265).

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(c) See Parliament (Elections and Meeting) Act, 1943, s. 3, and explanation by the Secretary of State, H. C. Deb. (1942-43) 393, c. 66-67.



With the approach of war, these motions were passed with increasing frequency up to session 1938-39. Power to recall the House was extended to the Chairman of Ways and Means (*d*), and later to the Deputy Chairman (*e*), in the case of the illness of the Speaker. From the beginning of session 1939-40 the motion was passed as a sessional resolution (*f*).

#### PROVISION FOR NOTICES DURING ADJOURNMENT OF THE HOUSE OF COMMONS

Under a sessional order relating to the business of the House, passed with slight variations each session since session 1939-40, it is provided that whenever the House is adjourned for more than one day, notices of Questions (*g*) and of amendments to public bills may be handed to the clerks at the table up to 4.30 p.m. in the same way and subject to the same rules of notice as if the House were sitting (*h*). Notices of amendments to public bills may also, under the same sessional order, be accepted by the clerks at the table before a bill has been read a second time (*i*).

On 17 December 1940, an order relating to public bills allowed new clauses to be moved on report without notice, notwithstanding the provision in Standing Order No. 37, which prohibits this practice.

On 29 June 1943, on consideration of the Finance Bill, Mr. Speaker said that although it was now in order to accept manuscript new clauses, he would not do so if there had been time to put them on the order paper. (*k*)

This departure from Standing Order No. 37 has been embodied in the sessional order relating to the business of the House passed at the beginning of each session during the war since that date (*l*).

#### MEETING PLACE AND SITTINGS

For the greater part of the war secrecy relating to place and times of meeting was observed, and minor modifications in procedure became necessary as a result of enemy action.

(i) **Place of Meeting.**—On 13 May 1941, after the burning in an air raid of the Commons' Chamber on 10 May 1941, the Prime Minister informed the House that the old House of Commons had been damaged, probably beyond repair, and said, "The House will like to be informed that we have already begun the act of preparation of a third building in case anything else should happen to this one." (H. C. Deb. (1940-41) 371, c. 1086.) For some years this was the only public indication that the House of Commons was sitting elsewhere after the air raid of 10 May 1941. The temporary place of meeting of both Houses was Church House, Westminster, and the days on

(*d*) C. J. (1938-39) 62.

(*e*) C. J. (1940-41) 187.

(*f*) C. J. (1939-40) 8. In the Lords, a similar sessional resolution is passed, L. J. (1939-40) 12, etc.

(*g*) See H. C. Deb. (1939-40) 365, c. 26-7; *ibid.* (1941-42) 376, c. 74.

(*h*) See e.g. C. J. (1941-42) 7. In sessions 1914-16, 1916, 1917-18, 1918 and 1919 notices of amendments received by the clerks at the table by five o'clock on Friday or Monday when the House adjourned over Friday were ordered to be printed (C. J. (1914-16) 283; *ibid.* (1916) 13; *ibid.* (1917-18) 11; *ibid.* (1918) 6; *ibid.* (1919) 24.

(*i*) A similar sessional order was made in the Lords and by practice a Peer has always been able to hand in notices during a recess.

(*k*) H. C. Deb. (1942-43) 390, c. 1556. See also p. 535.

(*l*) See e.g. C. J. (1941-2) 7.

which the House of Commons met in this annexe are recorded in the Journals (*m*).

Some weeks after the destruction of the Commons' Chamber the Prime Minister, by his Majesty's command, acquainted the House that, the House of Peers having placed their Chamber at the disposal of the Commons, his Majesty had directed that that Chamber should be made available for the Commons. The Commons thereupon agreed to an address thanking his Majesty and to a resolution thanking the Peers. (C. J. (1940-41) 143.)

The House of Commons accordingly met in the House of Lords, and certain procedural modifications became necessary. Thus the interval between the two questions on a division was increased to four minutes, but as the result of experience the interval was later left unchanged at two minutes, and the order to lock the doors was made flexible, dependent upon a signal from the Whip in charge of the Government Lobby after not less than four minutes from the putting of the question. (See H. C. Deb. (1940-41) 374, c. 1283-5.) After giving up their Chamber to the Commons, the House of Lords met in the King's Robing Room, a fact which was kept secret between 1941 and 1944.

(ii) **Times of Sitting.**—The dates on which the Lords and Commons were to sit were not announced in advance from 1940 to 1944, and the device of referring to the first, second or third sitting day after the Sunday in each week of the session was adopted in the published Order Paper, with the intention of withholding the actual date of sitting from the knowledge of the enemy, but not from those whose duty it was to attend upon Parliament. The dates were again allowed to be published in advance on and after 6 April 1944 (*n*).

From 1940 to 1944, the hours of sitting and timing of Members' speeches were omitted from the Official Report for security reasons, but were restored following Mr. Speaker's announcement of 27 September 1944 (*o*). The time of adjournment, normally recorded in the Minutes of the House of Lords and in the Votes and Proceedings of the Commons, was also omitted from 1940 to 1944.

As the threat of enemy action receded, relaxations were made in the secrecy relating to the days of sitting and the times of the meeting and rising of each House. On 26 September 1944, the Leader of the House of Commons announced that secrecy relating to hours of sitting need no longer be observed, and accordingly orders of 24 November 1943 and 24 February and 31 March 1944, which had been made in secret session, were published. (See Votes and Proceedings, 26 September 1944.)

Publication of these orders indicated what the times of sittings had been during the war. Thus on 24 November 1943, in secret session it was resolved that the House should meet at 11 a.m. instead of at 2.45 p.m., and be adjourned (without question put) at 5.30 p.m. (C. J. (1943-44) 6). When increasing hours of daylight made it possible, the House ordered in secret session on 24 February 1944, that the sittings should begin at 11 a.m. and be adjourned (without Question put) at 6.30 p.m. (C. J. (1943-44) 56). On 8 March 1945, the House ordered these times to be altered to 2.15 p.m. and 9.45 p.m.

(*m*) The Journals of the House of Lords were published throughout the war, but entries relating to secret sessions were held over till subsequent issues. The wartime Journals of the House of Commons were not published till session 1945-46, when all proceedings in secret session were disclosed in the Journals.

(*n*) See H. C. Deb. (1943-44) 398, c. 2171.

(*o*) H. C. Deb. (1943-44) 403, c. 247.

*Friday Sittings.*—Alterations were also made in the times prescribed by S.O. No. 2 for Friday sittings ; and a period was provided during which a count could not be called, thus modifying S.O. No. 24 (*p*).

#### MODIFICATIONS IN RULES RELATING TO SITTINGS OF THE HOUSE OF COMMONS

On 17 September 1940, a modification of Standing Order No. 1 was agreed to, enabling the Government to move without notice that specified business be exempted from the provisions of that Standing Order. This power was granted to the Government for the purpose of obtaining essential and urgent business.

When, on one occasion, the motion to suspend the rule, under this exceptional procedure, was not moved until the moment of interruption, and a very large number of Members had no idea that it was proposed to extend the sitting, objections were raised to the proceeding (H. C. Deb. (1943-44) 403, c. 171 and 247).

On 21 April 1943, a further modification was made in the Standing Order No. 1, which allowed the Government power to move the suspension of the standing order for a limited period of time.

In asking the House to assent to the amendment of the standing order, the Leader of the House said, "There have been occasions within my experience when it has been the desire of the House to extend debates for a definite limited time, perhaps an hour or two, and when . . . I hesitated to propose the suspension of the rule because the debate might drift on longer than most Members . . . would wish. I think this new arrangement would meet the convenience of the House on such occasions" (H. C. Deb. (1942-43) 388, c. 1714 and 1731).

The power to suspend the rule for a fixed time of one hour did not make it competent for the House, having once come to a decision on the matter, to extend the sitting for a further hour by means of a motion made without notice (Mr. Deputy Speaker's ruling, H. C. Deb. (1943-44) 399, c. 1994).

**Concession of extra time to private Members.**—As the whole of private Members' time was regularly appropriated by the Government by means of a sessional resolution throughout the period of emergency (*q*), an amendment of the Standing Order relating to sittings of the House was passed on 25 November 1943, which allowed, by way of concession to private Members, half an hour for debate on the adjournment at the end of business (*r*), whether or not the hour for interruption had been passed, or whether or not the House had suspended the rule relating to the time for interrupting business. As many private Members availed themselves of the opportunity of raising subjects of debate on the motion for the adjournment during this half-hour, Mr. Speaker instituted a system of informal notice of the subject of debate to be raised by putting up a list of the adjournment motion topics behind the Speaker's chair (*s*).

This system of informal notice was not binding, but individual Members who had secured the adjournment and then raised a subject other than that

(*p*) See Votes and Proceedings, 29 November, 1944, 8 March and 15 August, 1945.

(*q*) See e.g. C. J. (1942-43) 7.

(*r*) See also explanation by Mr. Speaker, H. C. Deb. (1943-44) 396, c. 551-2.

(*s*) H. C. Deb. (1943-44) 396, c. 42.

of which they had given notice, although within their rights, caused other Members inconvenience. (See Mr. Speaker's statements of 10 February 1944, H. C. Deb. (1943-44) 396, c. 1916-17; and 30 June 1944, *ibid.* 401, c. 977-8.)

On 28 November 1944, Mr. Speaker limited the informal giving of notice by private Members to not more than a fortnight in advance (H. C. Deb. (1943-44) 404, c. 2403-5). Such notice had to be given personally by the Member at the Speaker's office.

#### ORDERS RELATING TO EMERGENCY LEGISLATION

On 24 August 1939, 1 September 1939, and 22 May 1940, orders were made by the House of Commons enabling certain bills to be presented without notice by a Minister of the Crown, to be considered forthwith and passed through all stages on the same day and directing that the requirements of Standing Orders Nos. 64 and 68 and of the practice of the House relating to the imposition of charges upon the people be deemed to have been complied with in respect of any provisions of the bills or any amendments moved by a Minister of the Crown which authorize expenditure or the imposition of any such charge. Such bills were ordered to be considered in Committee of the whole House immediately after they had been read a second time. The King's Recommendation was signified to the motions for these Orders.

The Order of 1 September 1939 also directed that Mr. Speaker should leave the chair without question put on the reading of the order of the day for the Committee of Supply and that a resolution in the Committee of Supply for a vote of credit and a resolution in the Committee of Ways and Means authorizing the issue out of the Consolidated Fund of a sum to make good any amount thereby voted might be moved without notice and when reported might be considered forthwith by the House.

The Orders of 24 August 1939 and 22 May 1940 related to one bill only, whereas the Order of 1 September 1939 related to an Appropriation bill and to fifteen other bills (*t*).

For previous instances of bills passed with unusual expedition, see p. 560.

#### PROCEEDINGS IN SECRET SESSION

Following the precedents of the years 1916-18, whenever it seemed that matters of value to the enemy might be revealed in debate in either House, motions were made for the House concerned to go into secret session, either to discuss a particular named subject (*u*), or for the remainder of the sitting (*a*) without any reason being specified. It was also a frequent practice to devote part of a sitting only to secret matters, and then resume a public sitting.

Thus on Wednesday, 13 November 1940, the House of Commons was moved into secret session in the usual way in order to hear a statement on public business from the Prime Minister. This occurred before the commencement of public business. The motion for the secret sitting was framed as follows: "That the proceedings in connexion with the statement on public business to be made by the Prime Minister be held in secret session."

(*t*) C. J. (1938-39) 402, 405; *ibid.* (1939-40) 138.

(*u*) e.g. Home Defence, L. J. (1939-40) 165.

(*a*) e.g. C. J. (1940-41) 5.

When the statement and supplementary questions referring to it were concluded, Mr. Speaker informed the House that he proposed to re-admit the public. Steps were taken informally to convey this statement to the public, and after a short pause to admit of their return, the Speaker called the Prime Minister to move the motion which stood in his name before the Orders of the Day.

On 28 November 1940, the Address in reply to the King's Speech was debated partly in secret session (*b*).

The considerations leading to a subject being debated in secret rather than in open session were described by the Lord Privy Seal on 9 July 1942 (*c*).

Also following the precedents of 1916-18 (*d*), when a full day's debate was in secret a report of proceedings in secret session was usually published by Mr. Speaker. The following is an example of such a report: "The adjournment of the House was moved, and a debate took place on Home Defence and other matters" (*e*).

On 31 March 1943, in secret session, it was desired to show how Members had voted on a certain matter. Mr. Speaker, in his published report of proceedings in secret session, indicated that a division had taken place on an amendment to a motion by the Prime Minister, and also published the form of the question and the names of Members who took part in the division (*f*).

The question of communication to constituents of any general impression created on the mind of Members attending a secret session was considered on 16 July 1942, when Mr. Speaker ruled that such communication would be irregular (*g*).

Other points arising from the necessity of holding secret sessions which the House of Commons considered, or on which rulings were given, were:

Arrangements for Commons' Members attending secret sitting in the Lords (H. C. Deb. (1939-40) 361, c. 1148).

Divisions (*ibid.* (1940-41) 374, c. 1912).

Method of ensuring administrative action on suggestions made in secret (*ibid.* (1939-40) 362, c. 595).

Mr. Speaker's ruling on disclosure by Member and penalties (*ibid.* (1939-40) 355, c. 1031).

Mr. Speaker's ruling on disclosure by Members to Lords (*ibid.* (1939-40) 355, c. 1210).

Reporting of, by Mr. Speaker (*ibid.* (1941-42) 376, c. 2246).

Subsequent discussion on, with other Members not present (*ibid.* (1941-42) 376, c. 2246-50).

**Informal Secret Meetings.**—Apart from the arrangements for secret session, described above, resort was had to informal meetings between Ministers and Members whose constituencies were particularly subjected to enemy attack by flying bombs. On 18 July 1944, the Leader of the House announced that the War Cabinet desired Ministers to meet

(b) C. J. (1940-41) 12.

(c) H. C. Deb. (1941-42) 381, c. 951-5.

(d) e.g. H. C. Deb. (1916) 81, c. 2463.

(e) H. C. Deb. (1939-40) 362, c. 270; (20 June 1940.)

(f) H. C. Deb. (1942-43) 388, c. 200-4.

(g) H. C. Deb. (1941-42) 381, c. 1363-8.

Members in this manner, particularly those whose constituencies were most closely affected. Several Members objected to such an arrangement as constituting a meeting of the House without the Speaker (*h*).

On 21 July 1944, Mr. Speaker warned the House that these meetings should be regarded as quite unofficial and, while recognizing that the demands of war must give rise to exceptional methods, he hoped that in normal times such meetings would cease (*i*).

**Proceedings arising from alleged disclosure following secret sessions.**—Arising from an alleged report of proceedings in the Commons in secret session, judicial action was taken which led to the trial of a private individual on a charge of contravening Regulation 3 (2) of the Defence (General) Regulations, 1939. This Regulation made it an offence to report or purport to report the proceedings of a secret session. As it was necessary for the prosecution to prove the resolution of the House for going into a secret session, leave of the House was given to a senior clerk in the Journal Office to attend the court (*k*).

On 5 May 1942, a complaint was made in the Commons of breach of privilege by an alleged disclosure by a Member of proceedings in secret session. The matter of the complaint was then debated in secret session (*l*). A report of the proceedings issued by Mr. Speaker showed that the matter of the complaint was referred to the Committee of Privileges on a division. Later, the Committee made a secret report thereon (see below).

On 7 May 1942, another complaint was made by a Member that a breach of privilege had been committed by another Member by disclosing proceedings in secret session, and this matter was also referred to the Committee of Privileges, after being considered in open session (*m*).

#### PROVISION FOR SECRET REPORTS FROM SELECT COMMITTEES OF THE HOUSE OF COMMONS

From 1940 to 1944 the Select Committees on National Expenditure were given power, in cases where considerations of national security precluded the publishing of certain recommendations, to address memoranda to the Prime Minister for the consideration of the War Cabinet, provided that they informed the House whenever such memoranda were communicated (*n*). Such secret memoranda could not be referred to, even in secret session, because they had not been laid before the House (*o*).

In session 1941-42 the House resolved that a report of the Committee of Privileges and minutes of evidence should be printed for the use of Members only, and that not more than 615 copies should be printed; it was further resolved that any Member or any other person who disclosed the contents of the report, proceedings or evidence, except in

(*h*) H. C. Deb. (1943-44) 402, c. 29-34.

(*i*) H. C. Deb. (1943-44) 112, c. 481-6.

(*k*) C. J. (1939-40) 235.

(*l*) Votes and Proceedings, 5 May 1942 and C. J. (1941-42) 96.

(*m*) C. J. (1941-42) 98; Report of Committee, H. C. 93 (1941-42).

(*n*) See e.g. C. J. (1943-44) 14, 70.

(*o*) H. C. Deb. (1943-44) 398, c. 408-11.

secret session, would be guilty of a breach of privilege. Arrangements were made for the delivery of the report to Members and the return of the copies under cover to the Vote Office after being read, all of which copies were ordered to be destroyed, save for two copies to be preserved by the Clerk of the House (*p*).

**Secrecy in committees on opposed private bills.**—The proceedings on the Kent Electric Power Bill in Group A on 21 May 1941, illustrate the exceptions occasionally made in the course of the war to the general rule that a committee on a private bill sits as an open court. At the commencement of the proceedings on this bill the Chairman said :

“ The Ministry of Information have brought to the notice of the Chairman of Ways and Means that, under Defence Regulation 56, as amended by Statutory Rules and Orders, No. 452, of 1941, it is undesirable that the general public or press should be admitted to the proceedings on the Kent Electric Power Bill.

“ The Committee will, therefore, sit in private, that is to say, the press and general public will be excluded from the proceedings. The agents for the promoters and the petitioners have been asked to furnish the clerk with a nominal list of all persons, including counsel, whose attendance is essential to the proceedings. At the conclusion of this statement the room will be cleared, and the clerk, with the assistance of the agents, will check the names on the lists at the door of the room as each person enters. A copy of the complete list will be given to the Serjeant-at-arms for transmission to the police, who will have instructions to admit no person whose name is not on the list.

“ Proceedings in the Committee are protected by privilege, and there will be no restriction. The evidence will be taken down and printed as usual. However, it is pointed out that any publication of proceedings outside this room would not only be, in the circumstances, a possible breach of privilege, but also an offence under the Defence Regulations. The agents for the promoters have undertaken with the assistance of the agents for the petitioners to control the issue of the printed evidence so as to avoid its reaching any person not entitled to see it.”

#### STATUTORY AND OTHER PROVISIONS RELATING TO MEMBERS

(i) **Legislation relating to Ministers and Members.**—Emergency legislation provided for additional Ministers sitting in the Commons under the provisions of the Ministers of the Crown (Emergency Appointments) Act, 1939. Certain disqualifications for membership of the Commons as well as for Members serving in offices of profit under the Crown were removed by the House of Commons (Service in His Majesty's Forces) Act, 1939, by the House of Commons Disqualification (Temporary Provisions) Act, 1941 to 1944, and by the Regional Commissioners Act, 1939. The most important of these in its effect on Members was the House of Commons Disqualification (Temporary Provisions) Act, 1941, which allowed Members to hold a wide variety of appointments which would normally disqualify, provided a certificate was issued by the First Lord of the Treasury that the appointment was required in the public interest for purposes connected with the prosecution of the

war (g). The general effect of this legislation was to enable members of the House of Commons to hold a much wider variety of military and civil appointments than was possible under the emergency legislation of the war of 1914-18 (r).

For a survey of the constitutional aspect of this legislation see H.C. 120, p. xxxviii to xliii (1940-41).

(ii) **Restrictions voluntarily accepted by Members, or imposed by the various Defence Regulations.**—In common with all his Majesty's subjects, Members of Parliament accepted many restrictions on their personal liberty.

After some debate the House agreed to the carrying of passes of admission to the Palace of Westminster by Members, for purposes of security (H. C. Deb. (1939-40) 361, c. 549-50; *ibid.* (1941-42) 380, c. 1011-26; *ibid.* 381, c. 1008-36). For security reasons also, Mr. Speaker informed the House on 6 June 1940, that members of the public, hitherto admitted to the galleries when room permitted, would in future only be admitted if a Member signed a ticket for them, and Mr. Speaker reminded Members that they must make themselves personally responsible for persons admitted in this way (H. C. Deb. (1939-40) 361, c. 999).

On 11 December 1941, the Prime Minister described the position of Members under the National Service Acts (H. C. Deb. (1941-42) 376, c. 1684).

In the case of a Member writing a letter to *The Times*, the letter might be censored by the censorship department of the Ministry of Information when submitted at the discretion of the editor (H. C. Deb. (1942-43) 390, c. 1613).

The detention of a Member under Regulation 18B of the Defence (General) Regulations, 1939, made under the Emergency Powers (Defence) Acts, 1939 and 1940, led to the Committee of Privileges being directed to consider whether such detention constituted a breach of the privileges of the House; the Committee reported that there was no breach of privilege involved (s).

(iii) **Scrutiny of Questions, etc.**—On 11 September 1941, the Prime Minister stated that the clerks at the table, exercising authority under Mr. Speaker, were empowered under a war-time procedure to consider representations from departments that certain matters should not be put on the order paper and that questions referring to them should be considered by the departments in manuscript on security grounds (t).

On 6 June 1940, Mr. Speaker drew Members' attention to the Prime Minister's letter to Members on care in wording their questions (u).

Where any question of security was involved, publication was not made in the Official Report of Members' remarks in the House (a).

(iv) **Presumption of death of Members on active service.**—On 6 February 1941, Mr. Speaker explained the position relating to Members of the Commons gazetted as missing on active service and afterwards presumed to be dead.

(g) See e.g. C. J. (1940-41) 119.

(r) See e.g. H. C. Deb. (1943-44) 397, c. 340-44.

(s) H. C. 164 (1939-40).

(t) H. C. Deb. (1940-41) 374, c. 294-5.

(u) H. C. Deb. (1939-40) 361, c. 998.

(a) H. C. Deb. (1942-43) 390, c. 1794.



In deciding whether or not writs should be issued to fill such vacancies, Mr. Speaker, after consulting the House, later announced that he had secured the assistance of a panel of advisors consisting of Members of all parties. If Mr. Speaker became satisfied, after any necessary consultation with two members of this panel, of the presumed death of a Member, he proposed to announce the death and allow a motion for a new writ after one week (H. C. Deb. (1940-41) 368, c. 1088-9, 1527; *ibid.* 369, c. 299 and 375; *ibid.* (1941-42) 377, c. 425).

#### MODIFICATIONS IN COMMONS PROCEDURE DUE TO AIR RAIDS

During the attacks by air on London, procedure was affected in minor details by the normal precautions taken on the advice of the Civil Defence authorities, with the general assent of Members.

On 19 June 1940, the sitting was suspended for an air-raid rehearsal (H. C. Deb. (1939-40) 362, c. 192).

On 11 July 1940, a sessional order was passed relating to air-raid warnings and their effect on the sittings of the House, as well as on any business under consideration when suspension of the sitting became necessary (*b*).

On 5 September 1940, warning of an imminent air raid having been given, the sitting was suspended during Questions, and Question Time was extended as a consequence (H. C. Deb. (1939-40) 365, c. 18).

The order relating to air-raid warnings was passed as a sessional order at the beginning of session 1940-41. It was again passed, with modifications which confined the possible period of suspension to the period covered by the danger imminent signal, at the beginning of sessions 1941-42, 1942-43 and 1943-44.

For an example of suspension of sitting owing to an air raid being imminent, see H. C. Deb. (1939-40) 365, c. 116.

The wearing of gas masks in the Chamber was deprecated, but not ruled out of order (H. C. Deb. (1940-41) 370, c. 1485).

On 7 November 1940, Mr. Speaker explained the delay in the publication of the Official Report as due to the difficulties of night printing during air raids (H. C. Deb. (1939-40) 365, c. 1448).

The power given to select committees to adjourn from place to place, not normally included in the orders of reference without special reason, was given freely during the war to meet contingencies which might arise from enemy action (*c*).

#### OTHER MISCELLANEOUS MODIFICATIONS

(i) **No second round of Questions.**—On 8 December 1942, Mr. Speaker announced that, as it was the view of the House of Commons that it was undesirable for Ministers to have to wait about on the chance of having Questions put to them on the second round, Questions would not be called a second time during the war (H. C. Deb. (1942-43) 385, c. 1436-7).

(ii) **Statements by Ministers.**—Occasionally, devices which would not normally be approved were resorted to in order to permit proceedings on an Order of the Day to be interrupted by a motion for the adjournment of the

(*b*) C. J. (1939-40) 186.

(*c*) e.g. Select Committee on Conduct of a Member, C. J. (1939-40) 245.

House on which an important ministerial statement relating to the war might be made. The motion for the adjournment was later withdrawn and proceedings on the Order of the Day resumed (see e.g., C. J. (1938-39) 460; *ibid.* (1940-41) 127). When the House was in Committee on a bill the Chairman was ordered to leave the chair. The adjournment of the House was then moved and later withdrawn. The House then resolved immediately to resolve itself into a committee on the bill (C. J. (1943-44) 192).

The Speaker ruled privately on 11 October 1944, that such devices which infringed the accepted interpretation of Standing Order No. 12, and might lead to abuse, i.e., to springing surprises on the Opposition, should not be regarded as other than emergency procedure.

**(iii) The internal administration of the Houses of Parliament.—**

As a result of the war a number of new services affecting the internal administration of the Houses of Parliament had to be provided for the safety and convenience of both Houses. The principal of these were measures for active and passive defence—air-raid precautions, including fire fighting. These services were arranged more or less informally at first, mainly by officials. But the provision of more formal machinery was found necessary when Orders in Council under the Defence Regulations placed fire-watching duties on the occupiers of industrial or business premises, and imposed a maximum period of duty of forty-eight hours a month compulsorily on employees of such establishments.

The Defence (Palace of Westminster Fire Prevention) Regulations, 1941, made under the Emergency Powers (Defence) Act, 1939, laid upon all male British subjects employed at the Royal Palace of Westminster the obligation to perform fire-prevention duties, and set up the Fire Committee, appointed, under the provisions of this Defence Regulation, by the Lord Great Chamberlain after consultation with the Lord Chancellor, Mr. Speaker and the Minister of Works.

BOOK III

PROCEEDINGS IN PARLIAMENT:  
PRIVATE BUSINESS

## CHAPTER XXX

### PRELIMINARY VIEW OF PRIVATE BILLS

#### INTRODUCTORY

Private legislation is legislation of a special kind for conferring particular powers or benefits on any person or body of persons—including individuals, local authorities, statutory companies, or private corporations—sometimes in excess of or in conflict with the general law. As such it is to be distinguished from public general legislation, which is applicable to the general community and is treated in Parliament on an entirely different basis.

Until comparatively recently private legislation was effected by means only of private bills and it was not necessary to have any general term to describe non-public legislation. Since the middle of the nineteenth century, however, other forms of private legislation have grown up, almost all as alternatives to private bills and designed to simplify, expedite, or cheapen such legislation. Nowadays, therefore, private legislation falls into several categories, which are treated in Parliament by different methods and may be classified as follows :

- Private bills.

- Bills for confirming Provisional Orders.

- Special Orders.

- Bills for confirming Provisional Orders under the Private Legislation Procedure (Scotland) Act, 1936.

It is proposed in this Part to describe first the manner of passing private bills, with a reference to the other methods of legislation by which they have been or are being superseded, and then to deal in detail with these other methods in the order enumerated above (a).

#### DISTINCTIVE CHARACTER OF PRIVATE BILLS

Private bills are bills for the particular interest or benefit of any person or persons. Whether they be for the interest of an individual, of a public company or corporation, or of a parish, city, county, or other locality, they are equally distinguished from measures of public policy ; and this distinction is marked in the very manner of their introduction.

The essential difference in procedure between a public bill and a private bill is that, whereas a public bill is either presented direct to the House or introduced on motion by a Member of Parliament, a private bill is solicited by the parties who are interested in promoting it and is

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(a) References in this Part to standing orders are to standing orders of the House of Commons (Private Business) unless otherwise stated.

founded upon a petition which must be duly deposited in accordance with standing order (b). Furthermore, the payment of fees by the promoters is an indispensable condition of its progress (see pp. 867-68).

#### ORIGIN OF PRIVATE BILLS

In treating of petitions, the origin of private bills has been already glanced at (see p. 794); but it may be referred to again, in illustration of the distinctive character of such bills, and of the proceedings of Parliament in passing them. The separation of legislative and judicial functions is a refinement in the principles of political government and jurisprudence which can only be the result of an advanced civilization. In the early constitution of Parliament these functions were confounded, and special laws for the benefit of private parties and judicial decrees for the redress of private wrongs, being founded alike upon petitions, were not distinguished in principle or in form. When petitions sought obviously for remedies which the common law afforded, the parties were referred to the ordinary tribunals, but in other cases Parliament exercised a remedial jurisdiction. Other remedies of a more judicial character and founded upon more settled principles were at length supplied by the courts of equity, and from the reign of Henry IV the petitions addressed to Parliament prayed more distinctly for peculiar powers beside the general law of the land for the special benefit of the petitioners. Whenever these were granted, the orders of Parliament, in whatever form they may have been expressed, were in the nature of private Acts, and after the mode of legislating by bill and statute had grown up in the reign of Henry VI these special enactments were embodied in the form of distinct statutes (c).

#### PECULIARITY OF PROCEEDINGS ON PRIVATE BILLS

In existing practice the proceedings of Parliament in passing private bills are still marked by much peculiarity. A bill for the particular benefit of certain persons may be injurious to others, and to discriminate between the conflicting interests of different parties involves the exercise of judicial inquiry and determination. This circumstance causes important distinctions in the mode of passing public (general) and private bills and in the principles by which Parliament is guided.

#### LEGISLATIVE AND JUDICIAL FUNCTIONS OF PARLIAMENT

In passing public (general) bills, Parliament acts strictly in its legislative capacity: it originates the measures which appear for the general public good, it conducts inquiries, when necessary, for its own information, and enacts laws according to its own wisdom and judgment. The forms in which its deliberations are conducted are established for public convenience and all its proceedings are independent of individual parties, who may petition, indeed, and are sometimes heard by counsel, but who have no direct participation in the conduct of the business or immediate influence upon the judgment of Parliament.

(b) For cases of urgent necessity, where an exception has been made and a private bill has been brought in otherwise than upon petition, see pp. 861-62.

(c) See Stat. of the Realm, 9 Henry 6.

In passing private bills Parliament still exercises its legislative functions, but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors for the bill, while those who apprehend injury are admitted as adverse parties in the suit. Many of the formalities of a court of justice are maintained; various conditions are required to be observed and their observance to be strictly proved; and if the parties do not sustain the bill in its progress, by following every regulation and form prescribed, it is not forwarded by the House in which it is pending. If they abandon it and no other parties undertake its support (*d*), the bill is lost, however sensible the House may be of its value.

In 1928 the Manchester and Salford Improvement Bill was abandoned in committee by its original promoters, when its opponents, having succeeded in introducing certain amendments, undertook to solicit its further progress. In another case, the committee would not allow this course to be taken (*e*). In 1873, the committee on the Kingstown Township Bill, after the commissioners under their corporate seal had withdrawn from its promotion, refused to allow them to proceed with it as individuals (see p. 941). In the Horncastle Gas Bill, 1876, the promoters and opponents came to an agreement in committee by which the opponents paid the promoters' costs and were given the conduct of the bill.

The analogy which all these circumstances bear to the proceedings of a court of justice is further supported by the payment of fees (see p. 867-68), which is required of every party promoting or opposing a private bill or petitioning for or opposing any particular provision. It may be added that the solicitation of a bill in Parliament has been regarded by courts of equity so completely in the same light as an ordinary suit that the promoters have been restrained by injunction from proceeding with a bill the object of which was held to be to set aside a covenant (*f*), or which was promoted by a public body in evasion of the Towns Improvement Act, 1847 (*g*). Parties have also been restrained in the same manner from appearing as petitioners against a private bill pending in the House of Lords (*h*). Such injunctions have been justified on the ground that they act upon the person of the suitor and not upon the jurisdiction of Parliament. It would clearly be otherwise in the

(*d*) Cf. p. 947, as to "Parties not proceeding."

(*e*) Minutes, 1859, iii, 84, Cork Butter Market Bill.

(*f*) *Heathcote v. North Staffordshire Ry. Co.* (1850), 2 Mac. & G. 100; 28 Digest 487, 915; *Stockton and Hartlepool Ry. Co. v. Leeds and Thirsk and Clarence Ry. Cos.* (1848), 2 Ph. 666; 28 Digest 487, 914. On the 27 May 1869 the directors of the London, Chatham, and Dover Railway Company were restrained by Vice-Chancellor Stuart from further promoting a bill, which had already passed the Commons and had been read a first time in the House of Lords, and from using the seal of the company for any such or the like purpose (*The Times*, 28 May 1869). But on 31 May, the Lords Justices discharged this order as not being justified by the circumstances of the case, while they acknowledged the authority of the Court to make such an order if the occasion should warrant it, *Re London, Chatham and Dover Railway Arrangement Act*, *Ex parte Hartridge and Allender* (1869), 5 Ch. App. 671; 28 Digest 487, 919. Report of the Committee on Group A. of Private Bills (Bilston Corporation Bill) Suppl. to Votes, 3 June 1942. In this latter case, the Court having refused to make an injunction restraining Wolverhampton Corporation from petitioning against the Bill on the ground that it was a question of public policy for Parliament to decide, the Committee allowed the petitioners to be heard.

(*g*) Kingstown Township Bill, 1873; see p. 941.

(*h*) Parl. Deb. (1848), 100 c. 784 (Hartlepool Junction Railway).

case of a public bill. Acting upon the same principles, Parliament has obliged a railway company, under penalty of a suspension of its dividends, to apply in the next session for a bill to authorize the construction of a line of railway which the company had pledged itself to make, and in good faith to promote it (see p. 940).

#### PRINCIPLES BY WHICH PARLIAMENT IS GUIDED

This union of the judicial and legislative functions is not confined to the forms of procedure, but is an important principle in the inquiries and decision of Parliament upon the merits of private bills. As a court, it inquires into and adjudicates upon the interests of private parties; as a legislature, it is watchful over the interests of the public. The promoters of a bill may prove beyond a doubt that their own interests will be advanced by its success and no one may complain of injury or urge any specific objection, yet, if Parliament apprehends that it will be hurtful to the community, it is rejected as if it were a public measure, or qualified by restrictive enactments not solicited by the parties. In order to increase the vigilance of Parliament in protecting the public interests, the Chairman of Committees in the House of Lords and the Chairman of Ways and Means in the House of Commons are entrusted with the peculiar care of unopposed bills, and with a general revision of all other private bills (see pp. 858-60, 918, 960); while the agency of the Government departments is also applied in aid of the legislature (see p. 919).

#### PRIVATE BILLS PASS THROUGH SAME STAGES AS PUBLIC BILLS

In pointing out this peculiarity in private bills, it must, however be understood that while they are examined and contested before committees and officers of the House, like private suits, and are subject to notices, forms, and intervals unusual in other bills, yet in every separate stage, when they come before either House, they are treated precisely as if they were public bills (*i*). They are read as many times and similar questions are put, except when any proceeding is especially directed by the standing orders, and the same rules of debate and procedure are maintained throughout.

In the same way, if any proceeding on a private bill is postponed for three or six months, such postponement is equivalent to a rejection of the bill and no new bill for the same object may be introduced that session (*j*).

#### DIFFICULTY IN DETERMINING WHETHER CERTAIN BILLS SHOULD BE PUBLIC OR PRIVATE

The distinction between public and private bills has been generally defined, but considerable difficulties often arise in determining to which description particular bills properly belong. Thus, upon a public bill,

(*i*) Cf., for example, C. J. (1905), 405, when the consideration of the Lords' amendments to a private bill stood adjourned, on the interruption of business, under S.O. No. 1 (Public).

(*j*) For private bills imposing charges, see p. 899.

the question not infrequently arises whether it ought not more properly to have been introduced as a private bill or treated as a hybrid bill (see p. 834). And private bills have often been objected to and have been debarred from proceeding on the ground that, from their scope or objects or from the principles involved in them, they should have been introduced as public bills (*k*).

It has already been explained that there are certain bills—clearly belonging, in part, to both descriptions—that are regularly recognized as hybrid bills: they are those bills which, though brought in as public bills, are referred to the Examiners and are proved to affect private rights or particular localities and to be within the application of the standing orders relative to private bills. The special procedure which is adopted in their case, and which is itself of a hybrid character, has already been described (see p. 490).

Before giving examples to show what course has been adopted in various cases, whether on a public or a private bill, it would be as well to make clear one difficulty at the outset. The petition on which a private bill is founded is a petition to the House of Commons, or in a few cases to the House of Lords; but the bill itself is in the form of a petition to the Crown. In practice no private bill is ever introduced by the Government, and it has been stated that the reason for this is that the Crown cannot petition itself (*l*). This doctrine would almost certainly apply to a bill affecting property forming part of the land or any revenues of the Crown; but it is by no means clear that a public department—more particularly one set up by Statute—can in no case petition Parliament. As each department has a Minister representing it in Parliament, the simpler method is for him to introduce a public (hybrid) bill, but cases are not unknown of public departments petitioning Parliament *against* private bills (*m*), and, except by presenting reports or sending representatives at the request of a private bill committee to speak on the practice and policy of their departments, public departments have no right to be heard before such a committee except upon petition. Be that as it may, one consequence follows, namely, that no bill introduced by the Government and proceeded with as a hybrid bill can be cited as a precedent to show that the bill was of such a character that it ought to be treated as a public and not as a private bill. It may well be that such hybrid government bills as the London Water Bill, 1902, and the Port of London Bills, 1903 and 1908, and the London Passenger Transport Bill, 1930–31, dealt with matters of such far-reaching importance and extended to such wide areas that they ought in any case to have been introduced as public bills. There are two reasons why bills affecting private rights such as these are properly introduced as hybrid bills—first that, though in part they may be of a private nature, their main object is a public one; and second, that there may be no parties able and willing to present a petition. But, since the bills were introduced by the Government, the fact that they were

(*k*) H. C. Deb. (1938–9) 343, c. 954 and c. 1091–92.

(*l*) See Halsbury's Laws of England, 2nd edit., Vol. 24, p. 270 n.

(*m*) e.g. petition of the Office of Works against the Clapham Junction and Paddington Railway Bill, 20 February 1893.



introduced as public bills cannot be brought forward as an argument that bills of a similar nature, if not introduced by the Government, ought not to be introduced as private bills. In dealing, therefore, in this chapter with the question whether bills ought to be treated as public or private bills, this fact must be borne in mind. On the other hand, when a government bill has been proceeded with throughout as a public bill and not as a hybrid bill, this, though not conclusive evidence, is at any rate some indication that the subject-matter dealt with is of a public nature. With this caution the examples which follow may now be considered (*n*).

#### BILLS BROUGHT IN BY THE GOVERNMENT FOR LOCAL PURPOSES, ETC.

Bills which are brought in by the Government (dealing with Crown property, or with national and other works in different localities, etc.), and which affect private interests, are introduced as public bills, and subsequently treated as hybrid bills (*o*).

#### BILLS RELATING TO CITIES

A bill relating to a city is usually held to be a private bill.

**The Metropolis.**—Owing to the large area, the number of parishes, the vast population, and the variety of interests concerned, bills which affect the entire metropolis used, as a rule, to be regarded as measures of public policy rather than of local interest; and although a bill affecting the metropolis generally was not necessarily introduced as a public bill (*p*), such bills were usually so introduced and were either proceeded with throughout as public bills (*q*) or were dealt with as hybrid bills (*r*).

Bills relating to the Metropolitan Police and to Metropolitan Police Courts have always been public bills (*s*), but of recent years bills concerning the metropolis have mostly been promoted by the London County

(*n*) In pp. 828-37, government bills have been indicated as such in the text and distinguished with an asterisk (\*) in the footnotes.

(*o*) Public Offices Site Bill, 1882, and other Public Offices (Sites), etc., Bills to 1930-31; Crown Lands Bills, 1906, 1927, 1935-36; Post Office (Sites) Bill, 1900, and other Post Office (Sites) Bills to 1933-34; North Killingholme (Admiralty Pier) Bills, 1912-13, and 1930-31; Invergordon Harbour (Transfer) Bill, 1920; Air Ministry (Croydon Aerodrome Extension) Bill, 1924-25, etc., etc.

(*p*) Mr. Speaker Peel, Parl. Deb. (1895) 30, c. 709.

(*q*) \*Metropolitan Sewers Bills, 1848 and 1854; \*Metropolis Local Management Act Amendment Bill, 1858; Annoyance Jurors (Westminster) Bill, 1861; \*Metropolis Local Management Bill, 1855; Metropolitan Management Acts Amendment Bill, 1875, and Metropolis Management and Building Acts Amendment Bills, 1882 and 1890; Racecourses (Metropolis) Bill, 1878-79; \*Public Health (London) Bill, 1890-91; Public Health (London) Act (1891) Amendment Bill, 1893-94; \*London Government Bill, 1899.

(*r*) \*Metropolis Water Bill, 1851, and Metropolis Water Supply Bill, 1852; \*Thames Embankment (North Side) Bill, 1862, and Thames Embankment (South Side) Bill, 1863; \*Metropolis Gas Bill, 1867, and Metropolis Gas (Surrey Side) Bill, 1876; Metropolis Water Supply and Fire Prevention Bill, 1874; Metropolitan Toll Bridges Bill, 1877; Thames Steam Navigation Bill, 1880; \*Metropolitan Waterworks Purchase Bill, 1880; \*Hyde Park Corner (New Streets) Bill, 1883; Metropolis Water Supply Bill, 1891; Watermen's and Lightermen's Company Bill, 1892. And cf. C. J. (1851) 191; *ibid.* (1878) 13; *ibid.* (1893-94) 487, 492; *ibid.* (1895) 21, 44.

(*s*) \*Metropolitan Police Bills, 1829 to 1934-35, etc.; \*Metropolitan Police Courts Bills, 1839, 1840, etc.

Council and the great statutory authorities such as the Metropolitan Water Board and the Port of London Authority, and have been private bills.

*Bills promoted by the London County Council.*—Since 1874 bills for giving further powers to the Metropolitan Board of Works and to its successor, the London County Council, have been introduced and passed as private bills (t). Since 1919 the annual money bill of the London County Council, promoted in accordance with the London County Council (Finance Consolidation) Act, 1912, has, by standing order (u), been confined to powers or provisions relating to the borrowing, lending, and expenditure on capital account of money, and proceeds as a private bill (a).

*Bills relating to the River Thames.*—Thames Conservancy Bills and other bills relating to that river are usually private bills. Thus the Thames Conservancy Bills of 1857, 1894, 1905, 1911, 1921, 1924, and 1931-32 were private bills, but the Thames Conservancy Bill, 1864, was a hybrid bill introduced by the Government. The Thames Navigation Bill, 1866, and the Thames River (Prevention of Floods) Bill, 1877, were hybrid bills, but the Thames River (Prevention of Floods) Bill, 1878-79 was a private bill (b). In 1881 the Thames River Bill was introduced as a private bill, but, on exception being taken to it as a private bill, it was withdrawn and a public (hybrid) bill was introduced, though not passed.

*Port of London.*—The Port of London Bill, 1903, was introduced by the Government and proceeded with as a hybrid bill, but, after being suspended, was withdrawn in the next Session. The Port of London Bill, 1908, a Government bill which constituted the Port of London Authority, was also proceeded with as a hybrid bill, but bills promoted since then by the Authority have regularly been passed as private bills.

*London Buildings and Public Health.*—The London Streets and Buildings Bill, 1894, though for the most part it consolidated the provisions of the Metropolitan Building Acts and the Metropolitan Management Acts (as they related to buildings)—both public Acts—was a private bill promoted by the London County Council and received the Royal Assent as the London Building Act, 1894. Subsequent London Building Bills have been introduced as public bills by private Members, as was the Public Health (London) Bill, 1935-36, but the Public Health (London) Bill, 1890-91, was a public bill introduced by the Government.

*London Traffic and Transport.*—In 1924, the London Traffic Bill, which applied to an area far larger than the County of London, was introduced by the Government and treated as a public bill. On the London County Council (Co-ordination of Passenger Traffic) Bill, 1928-29, Mr. Speaker ruled (privately) that he could not say, as a matter of order, that it must not be introduced as a private bill, and it proceeded as such, but was suspended owing to a dissolution and was thrown out on third reading in the next Parliament (c).

(t) C. J. (1874) 26; *ibid.* (1875) 19, etc.; London Subways and Overhead Wires Bill, 1890; London County Council Bill, 1890, and London County Council (General Powers) Bills, 1891, etc., to 1936-37; London Sky Signs Bill, and London Overhead Wires Bill, 1891, etc.

(u) Now S.O. 220.

(a) For further information concerning this bill, see S.Os 220-23 (II. C.) and 175-77 (H. L.), and pp. 842, 861.

(b) C. J. (1878-79) 39.

(c) See also London Electric Railway Companies (Co-ordination of Passenger Traffic) Bill, 1928-29.

The London Passenger Transport Bill, 1930-31, which was a government bill to set up the London Passenger Transport Board, was treated as a hybrid bill and became law after being twice suspended. Bills promoted since then by the Board have been private bills.

**City of London.**—Bills concerning only the City of London have generally been private bills solicited by the Corporation itself, which desired special legislation affecting its own property, interests, and jurisdiction (*d*).

Thus even the bill for establishing a police force within the City was brought in upon petition, and passed as a private bill (*e*); and in 1863, when it was sought by the Government to repeal this Act by a public bill (for the amalgamation of the City and Metropolitan Police) without the notices required in the case of a private bill, standing orders were not dispensed with and the bill was not permitted to proceed (*f*). In 1919 the City of London Police Bill (to amend the enactments relating to the expenses of the police force of the City of London) was a hybrid bill introduced by the Government. Private bills also have been solicited for the reform of the Corporation itself (*g*), while measures for the same object have been proposed by the Government in public bills (*h*). Again, the Corporation and other parties sought, by means of private bills, to improve Smithfield Market, or to provide a suitable market for cattle (*i*), but the Metropolitan Cattle Market was established by an Act which was brought in by the Government as a public bill and subsequently treated as a hybrid bill (*k*). This Act, however, was amended in 1875 by a private Act (*l*), and the Metropolitan Market and Foreign Cattle Market (Deptford) Bill in the same year was also a private bill (*m*). Other bills, again, concerning the City of London, but at the same time affecting public interests, and involving considerations of public policy, have been introduced and passed as public bills (*n*). In 1870, on the second reading of the Brokers (City of London) Bill, objection was taken that it ought to have been brought in as a private bill, but Mr. Deputy Speaker pointed out that the bill had been

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(*d*) London (City) Small Debts Bills, 1847 and 1847-48; London Corporation Bill, 1849; Coal Duties (London and Westminster and Adjacent Counties) Bill, 1851; London Bridge Approaches Bill, and City of London School Bill, 1878-79; London City Lands (Thames Embankment) Bill, 1881; City of London (Fire Inquests) Bill, 1888; City of London Sewers Bill, 1897; City of London (Various Powers) Bills, 1900, 1911, 1912-13, etc., to 1932-33; London Bridge Widening Bill, 1901; City of London (Streets) Bill, 1902; City of London (Union of Parishes) Bill, 1907; City of London (Street Traffic) Bill, 1909; City of London (Tithes and Rates) Bill, 1910; Corporation of London (Bridges) Bill, 1911; City of London (Celluloid Regulations) Bill, 1913; City of London (St. Paul's Cathedral Preservation) Bill, 1934-35, etc.

(*e*) London City Police Bill, 1839, C. J. (1839) 175.

(*f*) \*Metropolitan and City of London Police Amalgamation Bill, 1863, C. J. (1863) 173, 176, 195, 211. Cf. also the London (City) Police Bill, 1874 (a private bill), C. J. (1874) 33.

(*g*) C. J. (1849) 15; *ibid.* (1852) 57; Parl. Deb. (1852) 119, c. 1035.

(*h*) \*London Corporation Bills, 1856, 1859, 1860, C. J. (1856) 114, Parl. Deb. (1856) 141 c. 314; C. J. (1859) 253, Parl. Deb. (1859) 154, c. 946; C. J. (1860) 28, Parl. Deb. (1860) 156, c. 282. These bills were not proceeded with.

(*i*) C. J. (1847-48) 176; *ibid.* (1851) 22, 26.

(*k*) C. J. (1851) 66, etc.

(*l*) Metropolitan Central Markets (Smithfield) Act, 1875.

(*m*) Both these bills were promoted by the Corporation (C. J. (1875) 11).

(*n*) \*Coalwhippers (Port of London) Bill, 1843, 1846, and 1851; \*Coal Trade (Port of London) Bill, 1845; Ballast Heavers (Port of London) Bill, 1852; \*London Coal and Wine Dues Continuance Bill, 1861; \*London Coal and Wine (Duties) Continuance Bill, 1863, 1867-68; and Coal Duties (London) Abolition Bill, 1889, Parl. Deb. (1889) 336, c. 701.

referred to the Examiners, who had reported that none of the standing orders relative to private bills were applicable to it (o). In 1883, another bill, founded upon this precedent, was introduced as a public bill (p). In 1871, the Court of Hustings (London) Abolition Bill, which proposed to establish a new superior Court of Law with jurisdiction not confined to the City of London, was brought in as a private bill: but, notice being taken of the extent and public importance of the measure, it was withdrawn (q). In 1864 the Weighing of Grain (Port of London) Bill was held to be properly a public bill as affecting an extensive area and a vast population, and its object being to substitute weighing for measurement of grain in conformity with a public Act of the same session (r). But in 1872 and in 1877 measures regulating the metage of grain in the Port of London were passed as private bills (s). In 1881, and again in 1882 and 1883, the Parochial Charities (London) Bill was brought in as a public bill and treated as a hybrid bill. In 1882 another bill with the same object, promoted by trustees and others interested, was brought in as a private bill (t).

**Edinburgh.**—Bills concerning Edinburgh have usually been private, but have sometimes been public, according to their objects and the circumstances connected with their introduction (u). Since 1899 legislation which previously would have been private has been dealt with by means of provisional orders under the Private Legislation Procedure (Scotland) Act (a) (see Chapter XXXVI).

The Edinburgh General Register House Acts of 1847 and 1896 (brought in by the Government) were respectively passed as public and hybrid bills. The abolition of the annuity tax in Edinburgh has been proposed in public (hybrid) bills introduced by the Government, and also in a private bill (b).

#### BILLS TREATED AS PUBLIC MEASURES THOUGH APPLICABLE TO FEW LOCALITIES

Although applicable only to few localities, certain bills have been treated as public bills on the ground that they were measures of public policy.

In 1856, the Local Dues on Shipping Bill (a government bill) was held to be properly a public bill. It proposed to abolish passing tolls, to transfer the harbours of Dover, Ramsgate, Whitby, and Bridlington to the Board of Trade, to impose rates, and to repeal local Acts. Being a measure of general policy, its character was not changed by the fact that only these four harbours came under its operation (c). In 1861, the Harbours Bill, also a government bill, was introduced and passed as a public bill. It affected the same four harbours and the local Acts under which they were administered, but otherwise dealt with so many matters of general legislation as to be unquestionably a measure of public policy. In 1899 a private

(o) C. J. (1870) 83, 104, Parl. Deb. (1870) 202, c. 740.

(p) London Brokers' Relief Act (1870) Repeal Bill, C. J. (1883) 12, 105.

(q) C. J. (1871) 103, Parl. Deb. (1871) 204, c. 1500.

(r) Parl. Deb. (1864) 176, c. 171.

(s) Metage of Grain (Port of London) Bill, 1872; London Corporation Bill, 1877.

(t) London Parochial Charities Bill, C. J. (1882) 28.

(u) C. J. (1852-53) 612, 613, 630; C. J. (1857) 298, 302.

(a) For a substituted bill, see Edinburgh Boundaries Extension and Tramways Bill [Lords], 1920.

(b) C. J. (1852) 48, 147. The Edinburgh Municipal and Police Acts of 1879, 1882, and 1891, were passed as private bills.

(c) C. J. (1856) 17, 72. The bill was not passed.

bill was introduced dealing with the rates leviable by certain harbour, dock and other authorities in different parts of the country; but the Chairman of Committees in the House of Lords considered that this object ought to be attained either by a public bill or by separate private bills applying severally to the various ports, etc., and the bill was not proceeded with (*d*).

#### BILLS RELATING TO THE ADMINISTRATION OF JUSTICE AND VARIOUS PUBLIC JURISDICTIONS IN A DEFINITE AREA

Bills relating to the administration of justice and various public jurisdictions have often been treated as public or hybrid bills (*e*), but frequently they have been solicited by the promoters as private bills (*f*).

On 10 March 1868 exception was taken to the Salford Hundred and Manchester (City) Courts of Record Bill, on the ground that it ought to have been introduced as a public bill, but it was shown by the Chairman of Ways and Means that the rules and precedents of the House justified its introduction as a private bill. In session 1911 the Salford Hundred Court of Record Bill was introduced by the Government and was treated as a hybrid bill (*g*).

In 1839 three Government measures were passed, as public bills, for improving the police in Manchester, Birmingham, and Bolton (*h*), the provisions being compulsory upon those towns, in the interest of public order, and the chief commissioners of police being appointed by the Crown (*i*). In 1908 a private bill was introduced for the purpose of transferring the powers and duties of the standing joint committee of the West Riding of Yorkshire to the county council, but on the order being read for its second reading Mr. Speaker called the attention of the House to its provisions which were of too important a character to be dealt with by a private bill, and the bill was accordingly withdrawn (*k*). In 1854 the Manchester and Salford Education Bill was introduced as a private bill, but on the second reading an amendment was carried, declaring education supported by public rates to be a subject which ought not, at the present time, to be dealt with by any private bill (*l*). In 1865 a private bill was brought in to alter the licensing system at Liverpool. It was objected that, as this bill proposed to deal with the public revenues, it ought not to have been introduced as a private bill, but, as the bill was strictly local, and as the

(*d*) L. J. (1899) 59.

(*e*) Buckingham Sumner Assizes Act, 1849; \*Newgate Gaol (Dublin) Act, 1849; \*Sheriff and Commissary Courts. (Berwickshire) Act, 1853; \*Cinque Ports Acts, 1855 and 1857; \*Falmouth Borough Act, 1865; County of Sussex Act, 1865; Chester Courts Act, 1867; \*Glasgow Boundary Act, 1871; \*Bath City Prison Act, 1871; \*Berwickshire County Town Act, 1903; Mayor's and City of London Court Bill [Lords], 1920, and \*Chatham and Sheerness Stipendiary Magistrate Bill, 1928-29, were passed as public bills. For bills relating to Metropolitan Police Courts and the Metropolitan Police, see p. 828. The \*Belfast Municipal Boundaries Act, 1853; County of Hertford and Liberty of St. Alban Act, 1874; and County of Suffolk Act, 1904, were treated as hybrid bills.

(*f*) Staffordshire Potteries Stipendiary Justice Acts, 1839, 1871, and 1895; Yorkshire Registries, etc., Bill, 1910; Pontypridd Stipendiary Magistrates Bill, 1920.

(*g*) C. J. (1911) 292, 293. Part XIV of the Liverpool Corporation Bill, passed in 1921 as a consolidating private Act (11 and 12 G. 5, c. lxxiv) repealed and re-enacted statutory provisions relating to Liverpool which had previously been contained in public general Acts.

(*h*) \*Manchester, \*Birmingham, and \*Bolton Police Bills, 1839.

(*i*) Parl. Deb. (1839) 50, c. 141.

(*k*) C. J. (1908) 32.

(*l*) C. J. (1854) 90. The Senior Public Elementary Schools (Liverpool) Act, 1939, was introduced as a public bill because it made an exception in the Education Act, 1921.

clauses relating to licence duties were printed in italics and reserved for the consideration of a Committee of the whole House, it was held that the bill was not open to any technical objection requiring its withdrawal (*m*). On the second reading, however, an amendment was carried to the effect that the granting of licences for the sale of intoxicating liquors was a subject which ought not, at present, to be dealt with by any private bill (*n*). Bills relating to the sale of intoxicating liquors on Sunday in particular counties have been introduced and treated as public bills (*o*).

#### BILLS CONCERNING RELIGIOUS COMMUNITIES, COLLEGES, ETC.

Bills concerning the property or powers of religious communities, colleges, etc., have usually been public, but have sometimes been private.

Thus in 1871 a bill for regulating the management of certain trust properties of the Presbyterian Church of Ireland was introduced into the House of Lords as a private bill, but objection being taken to legislation upon such a subject by means of a private bill, the bill was withdrawn, and a public bill for effecting the same object was passed by both houses (*p*). In 1876 the Methodist Conference Bill, in 1907 the United Methodist Church Bill, in 1928-29 the Methodist Church Union Bill and in 1938-39 the Methodist Church Bill were introduced and passed as private bills, the second and third of these being referred to a specially constituted committee (*q*). In 1905 a public bill—the Churches (Scotland) Bill—was introduced by the Government to provide for the allocation, between the Free Church and the United Free Church, of properties belonging to the former. It was a measure of general interest and of general application, but as it affected the property of individuals it was referred to the Examiners. They held, however, that the standing orders relating to private bills were not applicable to it, and it proceeded, and was passed, as a public bill (*r*). In 1888 the Keble College Bill was thrown out on third reading, on the ground that it was inexpedient to extend by a private bill, to a college exceptionally constituted, the exemption from the Mortmain Acts which was enjoyed by other colleges at Oxford and Cambridge (*s*). In the same session the public Act consolidating the law relating to mortmain and to the disposition of land for charitable uses was passed (*t*). By amendments made during its passage both Keble College and the Victoria University were included among the bodies for whom a special exemption was provided (*u*), and other bodies have since been added, by private bills, to the number of those to whom this exemption extends (*a*). In 1848 the Committee on the Farmers' Estate Society

(*m*) Parl. Deb. (1865) 177, c. 655.

(*n*) C. J. (1865) 92.

(*o*) Sale of Intoxicating Liquors on Sunday (Cornwall) Bills, 1882 and 1883; *ibid.* Durham, Yorkshire, Isle of Wight, Northumberland Bills, 1883, etc.

(*p*) Presbyterian Church (Ireland) Bill, 1871, Parl. Deb. (1871) 204, c. 1968. Cf. also the Primitive Wesleyan Methodist Society of Ireland Regulation Bill, 1871.

(*q*) C. J. (1876) 28; *ibid.* (1907) 8; *ibid.* (1928-29) 91.

(*r*) C. J. (1905) 248, 259.

(*s*) C. J. (1888) 165, 166, Parl. Deb. (1888) 324, c. 1687, *et seq.*

(*t*) \*Mortmain and Charitable Uses Act, 1888.

(*u*) S. 7; Parl. Deb. (1888) 330, c. 380-2, 437.

(*a*) Liverpool University Act, 1903; University of Leeds Act, 1904; University of Sheffield Act, 1905; University of Bristol Act, 1909; University of Reading Act, 1926. As to exemptions from the Mortmain Acts provided for previous to the consolidating Act of 1888, see the Charitable Uses Act, 1735, s. 4; the Ecclesiastical Commissioners Act, 1841, s. 13; the University College London (Private) Act, 1869; and Parl. Deb. (1888) 324, c. 1689.

(Ireland) Bill reported that, as the bill appeared to them to involve important considerations of public policy, it should be recommitted to a Committee of the whole House, which was accordingly done (*b*).

#### BILL CONCERNING A GOVERNMENT GUARANTEE

A bill concerning a government guarantee, even though it amended a private Act, has been a public bill.

In 1861 the Red Sea and India Telegraph Bill, which amended a private Act, was introduced (by the Government) and proceeded with as a public bill, as it concerned the conditions of a government guarantee (*c*).

#### BILLS APPARENTLY SIMILAR RESPECTIVELY REGARDED AS PUBLIC AND PRIVATE

A small distinction between two apparently similar bills is sometimes sufficient to constitute one a public and the other a private bill.

Thus in 1855 the Carlisle Canonries Bill, which suspended the appointment to the next vacant canonry, and directed the Ecclesiastical Commissioners to pay the income to the augmentation of certain livings at Carlisle, was treated as a public bill, as it related to the Ecclesiastical Commissioners—a public body holding certain church funds in trust for public purposes prescribed by law—and merely diverted the application of some of these funds from one purpose to another (*d*). On the other hand, the South Shields Parochial Districts Bill was held to be a private bill, as it sought to appropriate to local purposes (namely, the increase of certain small livings at South Shields) a sum of £15,000 to which the dean and chapter of Durham had become entitled by the sale of lands for the execution of certain public works (*e*). In 1872 a bill to vest the Rock of Cashel and the buildings and ruins thereon in trustees was brought in as a public bill, but, on its being referred to the Examiners, it was held that the standing orders relative to private bills which were applicable to the bill had not been complied with and the Standing Orders Committee resolved that such compliance should not be dispensed with (*f*). In the following year another bill for the same objects but empowering the Church Temporalities Commissioners and the secretary to the Commissioners of Public Works in Ireland, with the consent of the Lord Lieutenant, to transfer and assign the Rock and buildings to trustees, was similarly introduced and was held to be a public bill, as it merely sought powers for public bodies who already had a statutory interest in the property (*g*). In 1902 the management

(*b*) C. J. (1847-48) 782. Cf. also East Indian Railway Bill, 1878-79 (provisions not to be taken as a precedent); C. J. (1878-79) 308, 310; Parl. Deb. (1878-79) 247, c. 1081; and H. C. 226 (1879) (Special Report).

(*c*) C. J. (1861) 36, etc.; Denison, 78. See also Western Highlands and Islands (Transport Services) Act, 1929, and Cunard (Insurance) Agreement Act, 1930, which were both public Acts entailing government support for private undertakings.

(*d*) See also Newcastle Chapter Bill, 1884. Since 1919 matters of this kind have been dealt with by Measure under the Church of England Assembly (Powers) Act, 1919 (see pp. 566-67) but the Act makes no provision for special procedure for Measures of the nature of private bills.

(*e*) See also Burnley Rectory Bill, 1890; Hanover Chapel Bill, and Handsworth (Stafford) Rectory Bill, 1890-91; Somersham Rectory Bill [Lords], 1933-34, which was a private bill though it affected money held by the Minister of Agriculture on behalf of Cambridge University.

(*f*) C. J. (1872) 156, 157, 189, 198.

(*g*) C. J. (1873) 114, 115, 140.

of the Imperial Institute was transferred from the existing corporation to the Board of Trade by means of a private Act, but in 1916 when the management was transferred from the Board of Trade to another government department, namely, the Colonial Office, recourse was had to a public bill (*h*). Further changes were made and the two previous Acts repealed by another government bill in 1925 which was proceeded with as a hybrid bill (*i*).

PUBLIC BILLS OBJECTED TO ON THE GROUND THAT THEY SHOULD  
HAVE BEEN PRIVATE OR HYBRID BILLS

Public bills have been objected to on the ground that they should have been brought in as private or treated as hybrid bills for various reasons. Before quoting examples it is desirable to go shortly into the history of the matter so as to make clear their application. The standing order appointing the Examiners was first passed in 1846. In 1883 the standing order was first passed of which the first paragraph was in 1945 transferred to the public business standing orders (S.O. No. 32A) and the remainder with a new first paragraph became S.O. 224 (private business) (H.L. 83). These standing orders provide that where, in the case of a public bill, it appears that the standing orders compliance with which, in the case of a private bill, would have to be proved before the Examiners may be applicable to the bill, and the House has ordered the Examiners to examine the bill with respect to the applicability of such standing orders, the Examiners are to examine the bill; if they report a non-compliance and the Standing Orders Committee do not dispense with standing orders, the Order of the Day relating to the bill must be discharged. The duties of the Examiner in respect of a hybrid bill are prescribed by S.O. 224 (H. C.). The House of Lords in 1945 adopted a similar order. Since the passing of the above-mentioned standing orders very few bills have been objected to on the ground that they should have been brought in on petition, though objection has frequently been taken that they should have been referred to the Examiners. In recent years, moreover, hybrid bills have been brought in by unofficial members hardly distinguishable from private bills (*k*). Thus in the examples quoted no recorded cases of public bills being objected to on the ground that they should have been brought in upon petition will be found in recent years, though Members have been dissuaded in a few cases from bringing in bills which might have been so objected to. Objection might possibly be taken to a Scottish public bill on the ground that it could, before the passing of the Private Legislation Procedure (Scotland) Act, 1899, have been brought in on petition. The examples which follow show whether the objections have been overruled or have been sustained or whether the bill has not been proceeded with because the Standing Orders Committee have not dispensed with standing orders.

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(*h*) \*Imperial Institute (Management) Bill.

(*i*) \*Imperial Institute Bill, 1924-25.

(*k*) Suffolk County Council (Borrowing Powers) Bill, 1893-94; Orkney and Zetland Small Piers and Harbours Bill, 1896; Fisheries Acts (Norfolk and Suffolk) Amendment Bill, 1896; County of Suffolk Bill, 1904; Remission of Surcharges (Dublin) Bill, 1909; Mercantile Marine Memorial Bill, 1927.



## 1. Cases of Objections to Public Bills, on the ground that they should have been Private Bills.

(i) *Overruled*.—In 1873 a public bill was introduced for the protection and preservation of certain ancient monuments in various parts of the country, the monuments in question being enumerated in the schedule to the bill (*l*). Objections were raised that, as the bill affected the property of persons upon whose lands those monuments were situated, it should have been brought in as a private bill, but its nature and objects were obviously of a public character, and it concerned too many counties and localities to be treated as a private bill, nor were any of its objects such as are contemplated by the standing orders or referred to in them (*m*).

In 1873 exception was taken to the Union of Benefices Bill on the ground that, as it deprived certain parishes of powers which they possessed under the Union of Benefices Act, 1860, it ought to have been brought in as a private bill or to be treated as a hybrid bill, but it was held to be strictly a public bill (*n*).

(ii) *Sustained*.—In 1825 notice was taken that the Dunleary Harbour Bill and the College Lands Mortgage Bill ought to have been brought in upon petition and notices given as being private bills. Whereupon the Orders of the Day were discharged and the bills withdrawn (*o*).

## 2. Cases of Objections to Public Bills on the ground that they should have been hybrid bills and of Standing Orders not dispensed with.

(i) *Objections Overruled*.—In 1921 it was suggested that the Railways Bill, a government bill, one of the proposals of which was to amalgamate the various railway companies in certain groups, should be treated as a hybrid bill, but Mr. Speaker ruled that the bill dealt with a question of public policy affecting all the main railways of Great Britain and should proceed as a public bill (*p*).

The Electricity (Supply) Bills of 1926 and 1934-35, both government bills, were not referred to the Examiners, but objections were raised in the House that they should have been treated as hybrid bills. Mr. Speaker ruled that they should proceed as public bills as they affected electricity undertakers of any particular class alike and dealt with matters of public policy (*q*).

(ii) *Standing Orders not dispensed with*.—In 1905 a bill for the establishment of a central Canal Trust was introduced, containing a provision which did not apply to canals generally, but which compulsorily transferred to the trust the undertakings of certain canal companies only, which were specified in a schedule. The notices, that would have been necessary in such a case with regard to a private bill, not having been given, and standing orders not having been dispensed with, the bill was ordered to be withdrawn (*r*).

(*l*) Ancient Monuments Bill, C. J. (1873) 11, 13, 191, etc.

(*m*) See also Parl. Deb. (1874) 218, c. 574; *ibid.* (1875) 223, c. 879.

(*n*) Parl. Deb. (1873) 114, c. 282, 507. See also Brokers (City of London) Bill, 1870.

(*o*) C. J. (1825) 490 and 491.

(*p*) H. C. Deb. (1921) 142, c. 42.

(*q*) H. C. Deb. (1926) 193, c. 1683-89; H. C. Deb. (1934) 295, c. 1021-27.

(*r*) C. J. (1905) 201, 210, 214-16. Another bill was similarly introduced but with somewhat different provisions and to this standing orders were held not to apply. C. J. (1905) 289, 327. See also \*Metropolitan and City of London Police Amalgamation Bill, 1863.

In 1926, a bill to nationalize the Bank of England was not allowed to proceed as the requisite notices had not been given and standing orders were not dispensed with (s).

PRIVATE BILLS OBJECTED TO ON THE GROUND THAT THEY SHOULD  
HAVE BEEN PUBLIC BILLS

Private bills have frequently been objected to on the ground that they should have been brought in as public bills. In many cases these objections have been sustained and the bills have been withdrawn, or not proceeded with, but in other cases the bills have been allowed to proceed.

1. Cases of Private Bills withdrawn or not proceeded with.

In 1877 notices were given of a private bill for settling a scheme of arrangement for the Turkish loans of 1854, 1855, and 1871, but its subject was obviously not one to be dealt with by a private bill, and it was not proceeded with.

In 1900 on the second reading of a private bill promoted by the Metropolitan Water Companies, Mr. Speaker called the attention of the House to the large and important powers which were proposed to be conferred by it upon a public department (the Local Government Board), and which, according to the practice of the House, ought to be secured by a public rather than by a private bill, and the bill was accordingly withdrawn (t).

In 1910 on the second reading of the Society of Apothecaries of London Bill which had been introduced as a private bill, Mr. Speaker drew attention to the fact that the bill sought to empower the Society to grant diplomas in sanitary science and public health, and for dentistry and dental surgery, and ruled that such matters should be dealt with by a public bill as they were public interests, and the bill was accordingly withdrawn (u).

2. Cases of Private Bills allowed to proceed.

In 1919 objection was taken on its second reading to the British and Continental Bank Bill [Lords] proceeding as a private bill, on the ground that it appropriated the London assets of a Russian bank for the benefit of creditors through the London branch to the detriment of creditors through its Russian headquarters and branches, and in this way raised issues affecting international relations, but Mr. Speaker ruled that the bill affected private interests and was properly introduced as a private bill although the bearing of its proposals on public interests could be discussed (a).

PUBLIC BILLS INTRODUCED *vice* PRIVATE BILLS WITHDRAWN

When a private bill is withdrawn because it has been ruled to affect public interests which should have been dealt with by a public measure,

(s) Bank of England (Nationalisation) Bill, 1926. C. J. (1926) 77.

(t) C. J. (1900) 30, 124.

(u) C. J. (1910) 31; H. C. Deb. (1910) 14, c. 955. See also H. C. Deb. (1938-9) 343, c. 954 and 1091; Manchester and Salford Education Bill, 1854; Liverpool Licensing Bill, 1865; Presbyterian Church of Ireland Bill, 1871; Court of Hustings (London) Abolition Bill, 1871; Thames Navigation Bill, 1881; Keble College Bill, 1888; London Valuation and Assessment Bill, 1895; West Riding County Council Bill 1908, etc.

(a) H. C. Deb. (1919) 122, c. 1281. See also Salford Hundred and Manchester (City) Courts of Record Bill, 1867-68; Belfast Corporation Bill, 1896, and Telegraph Act (1892) Amendment Bill, 1899; London County Council (Co-ordination of Passenger Traffic) Bill, 1928-29.

a public bill for the same purpose has in many cases been introduced in its place and passed, but a bill, begun as a private bill, cannot be taken up and proceeded with as a public bill.

In 1865 the promoters of the Middlesex Industrial Schools Bill, dissatisfied with some amendments made in committee, determined to abandon it, whereupon Mr. Pope Hennessy gave notice that he should proceed with it as a public bill, but it was held that such a proceeding would be irregular, and it was not persisted in (b).

### REPEAL OF PUBLIC ACTS BY PRIVATE BILLS

It has been questioned whether public Acts may properly be repealed or amended by a private bill; and the inconvenience of their repeal or amendment by an Act which, being passed as a private bill and being of a local character, is not printed among the public general Acts, has sometimes been urged as a reason for refusing to sanction this course.

In 1832 a public general Act (7 & 8 Geo. 4, c. 31) was amended, so far as the city of Bristol was concerned, by means of a private Act. This case was quoted by Mr. Speaker, on 18 July 1864, when objection was taken to the Metropolitan District Railways Bill on the ground that it amended the Thames Embankment (a public or hybrid) Act, and he ruled that no such objection in point of order could be sustained (c).

No rule, however, has been established which precludes the promoters of a private bill from seeking the repeal or amendment of public Acts. A private bill is itself an exception, in some degree, from the general law, or seeks for some powers which the general law does not afford, and the fact that it provides for a repeal or an amendment of public Acts is far from always being a fatal objection to its being introduced as a private bill (d).

The provisions of some public general Acts are regularly amended, in some degree, with regard to particular localities, by means of private bills. In the case of sanitary enactments, for example, new circumstances may necessitate modifications or relaxations, in individual instances, of the stringent provisions of the general law, and it is now the regular practice for Parliament to modify or alter provisions of the Public Health Acts with regard to particular localities. Similarly, nearly every tramway (private) bill amends the provisions of the (public) Tramways Act of 1870. In 1894 a bill to consolidate and amend the enactments relating to streets and buildings in London, and a bill consolidating and amending the statutory powers of the Thames Conservancy, were both passed as private bills, although in each case various public Acts were repealed.

(b) Denison, 182

(c) Parl. Deb. (1864) 176, c. 1619. Cf. also the questions raised, in the Lords, on the Brokers' Bonds and Rent Bills, 1864, *ibid.* 408-411, the London (City) Tithes Act, 1864, which repealed a public Act of Henry VIII, *ibid.* 480, the Dover (Corporation) Harbour Bill, 1887, *ibid.* (1887) 656-668; and the Woolwich Borough Council Bill, 1905, Parl. Deb. (1905) 146, c. 1075-87; and, in the Commons, on the London Valuation and Assessment Bill, 1895, the Belfast Corporation Bill, 1896, and the Telegraph Act (1892 Amendment Bill, 1899 (see p. 839).

(d) Mr. Speaker Peel, Parl. Deb. (1895) 30, c. 708. Part XIV of the Liverpool Corporation Act, 1921 (a private Act) repealed the provisions of the Liverpool Court of Passage Acts of 1893 and 1896 (public general Acts).

But the scope of the public Acts which a private bill proposes to repeal or to amend, and the nature and degree of the proposed repeal or amendment, have to be considered (*e*), and provisions of this kind in private bills demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places.

On 14 February 1895, in the case of the London Valuation and Assessment Bill (introduced for the purpose of forming a common basis of imperial and local taxation), objection was taken to proceeding with the bill as a private bill, on the ground that it entirely changed the law of assessment and rating, and repealed numerous public Acts of Parliament. Mr. Speaker stated that the Acts proposed in this instance to be repealed were of vast magnitude and covered a vast area, that the Bill affected not only local rating but imperial taxation, involved interests which were much more than local, and proposed to create a new Court of Record in the matter of assessment, and that, in view of its scope, it ought to be introduced as a public, and not as a private bill (*f*).

This ruling was cited in support of similar objections taken on two subsequent occasions—but in each case unsuccessfully—to private bills. On 6 March, 1896, on the second reading of the Belfast Corporation Bill (to extend the city of Belfast and for other purposes), it was objected that, as the bill dealt with very large interests, embraced a very large area, and also repealed important sections in certain public Acts, it ought not to have been introduced as a private bill. But Mr. Speaker stated that, although the bill referred, as many private bills do, to some public matter, and sought to enact that public statutes should not apply or should be partially repealed, these provisions were not so numerous or so important as to necessitate its introduction as a public bill (*g*). On 6 March 1899 objection was taken to proceeding with the Telegraph Act (1892) Amendment Bill, which was a private bill to enlarge the powers of the National Telephone Company under the provisions of the Telegraph Act, 1892, on the ground that the area affected was the whole of the United Kingdom, that the bill established a new jurisdiction, and that the powers asked for should be granted, if at all, to the Postmaster-General. But Mr. Speaker pointed out that the bill was of far narrower application than the London Valuation and Assessment Bill, 1895, and that it proposed under certain conditions and in certain places to exempt a company, carried on for purposes of profit, from the operation of a particular subsection of a public Act, and he held that it would be in order, and in accordance with the action of the House on other occasions, that the bill should proceed as a private bill (*h*).

### CLASSIFICATION OF ACTS

When a public Act is repealed or amended by one passed as a private bill, the fact is noted in the annual volume of the public general Acts (*i*), but these volumes do not include those Acts themselves which have been passed as private bills. Nor do they now contain public Acts which are purely local in character. With regard to Acts passed before 1798,

(*e*) Mr. Speaker Peel, Parl. Deb. (1895) 30, c. 708; and Mr. Speaker Gully, Parl. Deb. (1896) 38, c. 335.

(*f*) C. J. (1895) 32, 38. Parl. Deb. (1895) 30, c. 706-10.

(*g*) Parl. Deb. (1896) 38, c. 335.

(*h*) Parl. Deb. (1899) 67, c. 1335-38.

(*i*) In the "Table showing the Effect of the Year's Legislation." See the volume of 1944, Table III.

it is difficult to determine whether they were, in fact, public or private, the only Acts included in the latter category being estate, divorce, naturalization, and other Acts of a personal character, while Acts for the making of roads, bridges, etc., and for other local improvements, were printed with the public Acts. In 1798 the distinction between "Public General Acts" and "Local and Personal Acts" was first introduced into the Statute book; and from that year until 1868 the classification of the printed Acts into one or other of these two divisions was determined by whether they had originated as public or as private bills. But since 1868 public bills of a local character have, when passed, been printed among the local Acts of each year (*k*).

The Interpretation Act, 1889 (*l*), declares that every Act passed after 1850 shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act. The term "Act" is defined as including a local and personal Act and a private Act.

### MEASURES SUPERSADING NECESSITY FOR PRIVATE BILLS

In order to explain clearly all the forms and proceedings to be observed in passing private bills, it is proposed to state them as nearly as possible in the order in which they successively arise, but before doing so it is necessary to advert briefly to the important modern legislation, by which the necessity for private bills has in numerous cases been superseded by general laws. As a result of the policy pursued in this respect by the legislature, parties are now enabled, for a large number of various purposes, to avail themselves of the provisions of public general Acts instead of having to apply for special powers by the means of a private bill. This policy has been carried out:

- (1) by amendments in the general law which have facilitated various kinds of objects or furthered particular classes of undertakings or interests, and by the passing of general Acts the provisions of which may be applied to local authorities either by adoption by the local authority or by departmental order;
- (2) by the establishment and extension of the system of "Provisional Orders";
- (3) by the institution of special orders; and
- (4) by the passing, in 1899, of the Private Legislation Procedure (Scotland) Act.

#### (1) AMENDMENTS IN THE GENERAL LAW AND ADOPTIVE ACTS

The following are some of the principal general Acts relating to matters which formerly have been the subjects of private Acts of Parliament: the Tithe Commutation Acts, the Acts for the enfranchisement of copyholds, the Joint Stock Companies Acts, the Acts for the regulation and management of railway companies, the Settled Estates and Settled Land Acts, the Acts relating to entail in Scotland, the Endowed Schools Acts, the Naturalization Act, the Divorce and Matrimonial Causes Acts,

(*k*) For the classification of Local and Personal and Private Acts, see p. 971.

(*l*) Ss. 9 and 39

the Education Acts, the Municipal Corporation Acts, the Public Health Acts, the Local Government Acts for England and Wales and Scotland, and the Water Act, 1945.

## (2) PROVISIONAL ORDERS AND CERTIFICATES

By the various statutes which authorize procedure by provisional order or provisional certificate, many of the government departments are empowered to make provisional orders, which are practically bills and which have only to be confirmed in an Act of Parliament in order to become law. In most cases these orders confer powers or secure objects for which a private bill was formerly necessary (see Chapter XXXV). It should, however, be observed here that, in addition to their powers of making provisional orders, many government departments have also been invested with powers of administration in matters which otherwise would have been the subject of special legislation, and are empowered in numerous cases to make orders which are not provisional, that is to say, which do not require confirmation in an Act of Parliament.

## (3) SPECIAL ORDERS

The provisional order system has itself been superseded in certain cases, particularly in regard to gas and electric light, by a system of special orders which differs from the provisional order system in that confirmation by Parliament is effected by means of an affirmative resolution instead of by a confirming bill (see p. 979 *et seq.*).

## (4) PRIVATE LEGISLATION PROCEDURE (SCOTLAND) ACT

By the Private Legislation Procedure (Scotland) Act which was passed in 1899, parties were provided with a new but compulsory means of obtaining parliamentary powers in regard to almost every matter affecting public or private interests in Scotland for which they were entitled to apply by means of a private bill. The special machinery which thus, in so large a class of cases, took the place of procedure by private bill, centres in the powers conferred by the Act, upon the Secretary for Scotland (as he then was), of issuing orders which are subsequently confirmed by Parliament in a bill.

The Act of 1899 and an amending Act of 1933 were consolidated by the Act of 1936 which now governs procedure (*m*) (see Chapter XXXVI).

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(*m*) For further short-lived experiments which to some extent superseded private bills see C. J. (1929-30) 128, etc. (Certified Bills) and Schemes under the Public Works Facilities Act, 1930, s. 1, which existed in sessions 1930-31 to 1933-34; C. J. (1930-31) 57, etc.; C. J. (1932-33) 22.

## CHAPTER XXXI

### PRELIMINARY PROCEEDINGS IN CASE OF PRIVATE BILLS, STANDING ORDERS COM- MITTEE, COMMITTEE OF SELECTION, GENERAL SUPERVISION BY CHAIRMEN OF COMMITTEES OF BOTH HOUSES, PARLIA- MENTARY AGENTS, FEES PAYABLE ON PRIVATE BILLS AND TAXATION OF COSTS

#### SOLICITING AND DEPOSIT OF BILLS (S.Os. 2 and 38) (BOTH HOUSES)

For every private bill—in whichever House it is eventually introduced—a petition, signed by the parties (or some of them) who are suitors for the bill, must be duly deposited in the Committee and Private Bill Office of the House of Commons on or before 27 November, with a printed copy of the bill annexed; and a printed copy of every such bill must also be deposited, on or before the same date, in the Office of the Clerk of the Parliaments, House of Lords.

#### LONDON COUNTY COUNCIL (MONEY) BILL

In the case of the annual money bill of the London County Council promoted in accordance with the London County Council (Finance Consolidation) Act, 1912 (see p. 829), the deposit of the petition for the bill, and other requisite deposits and notices are fixed at the later dates mentioned in S.O. 220 (H. C.) and S.O. 175 (H. L.) (see p. 861).

#### PREPARATION OF BILLS

In preparing their bills for deposit the promoters must be careful that no provisions are inserted which infringe standing orders, and that there are inserted such clauses as by standing orders are required to be inserted (*a*). If the bill is for any of the purposes to which the provisions of any of the "Clauses Acts" (*b*) are applicable, those provisions are invariably incorporated by reference subject to such exceptions and variations as may be thought necessary or desirable.

The principal "Clauses Acts" are the Companies Clauses Consolidation, Lands Clauses Consolidation, and Railway Clauses Consolidation Acts, 1845, the Markets and Fairs Clauses, Gasworks Clauses, Commissioners

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(*a*) See *e.g.* S.Os. 149, 151. (H. C.)

(*b*) See *Bigg. Clauses Consolidation Acts.*

Clauses, Waterworks Clauses, Harbours, Dock and Piers Clauses, Towns Improvement Clauses, Cemeteries Clauses, and Town Police Clauses Acts, 1847, and the Electric Lighting (Clauses) Act, 1899. These Acts, as stated in the preambles, were passed, "as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves." Some of them are amended by subsequent Acts. Where a bill provides for purchase of land, but not for compulsorily taking it, the Lands Clauses Acts will be incorporated "except the provisions relating to the taking of land otherwise than by agreement."

For the purpose of securing further uniformity in the drafting of bills two other documents have been prepared. The "Model Bill," issued by the office of the Lords' Chairman of Committees, contains a collection of model clauses for railway, tramway, gas, and water bills and numerous miscellaneous clauses in common use. This has not been revised since 1922, and some of the precedents contained in it are obsolete or require adaptation as a result of subsequent legislation. The volume of "Standard Clauses" first published in 1936 and revised in 1937 gives effect to the recommendations of the unofficial Committee on Common Form Clauses which was set up in 1936 by the Chairman of Ways and Means (c). These clauses deal with matters of local legislation such as lands, streets, and buildings, sewers and drains, infectious diseases, sanitary matters, food, public buildings, parks, seashore, entertainments, employment agencies, and massage establishments. They are of two classes, those which in the opinion of the Committee should normally be accepted, and those which ought not to be accepted without proof of local needs. These two classes are clearly indicated in the volume of Standard Clauses, which should be consulted in the preparation of bills containing provisions of the character indicated above.

## STANDING ORDERS (PRIVATE BUSINESS)

### COMPLIANCE BEFORE INTRODUCTION OF BILL

The requirements of the standing orders, which are to be complied with by the promoters of private bills before application is made to Parliament, were conveniently arranged by the Commons, in 1847, in the following order; and a similar arrangement has since been adopted by the House of Lords:

"1. Notices by advertisement. 2. Notices to owners, lessees, and occupiers of lands and houses. 3. Documents required to be deposited and the times and places of deposit (d). 4. Plans, books of reference, sections, and cross-sections."

By a new standing order, made by both Houses in 1945, compliance with these standing orders, so far as applicable, must be proved as respects every private bill, except in the case of a bill as to which the Chairman of

(c) See Report of the Committee, H. C. 162 (1936).

(d) As to the custody, and as to facilities for the inspection of, documents directed to be locally deposited under the standing orders cf. the Local Government Act, 1933 (ss. 279, 280) and S.Os. 27, 28.



Committees in the House of Lords or the Chairman of Ways and Means has certified, on application being made, that the bill is one which relates "to the estate, property, status, style, or personal affairs of an individual," and that these standing orders should not be applicable thereto (e). Bills of this kind are to be called "Certified Bills" in the Commons and "Personal Bills" in the Lords. The reasons for this new order and for the repeal of the former order dividing private bills into two classes are given in the report of the select committee on private bill Standing Orders, H. C. 30 (1945).

The requirements of the two Houses, under each of these divisions, are now, *mutatis mutandis*, practically identical (f). Their convenient arrangement and general similarity render unnecessary their insertion in this work ; and no version of the standing orders, of either House, relating to private bills can, at any time, be safely relied upon by the promoters of bills, except the last authorized edition.

#### DATES OF DEPOSITS

A select committee of the House of Commons in 1930, which reviewed the whole conduct of Private Business, recommended alteration of the dates laid down in the standing orders for the deposit of petitions for and against bills and other documents, and for the giving of the Gazette, newspaper and other notices.

The main effect of the committee's recommendations was that the petition for a bill should be deposited prior to the notices of the bill appearing in the Gazette or press and to the serving of notices on interested parties. The dates in force before 1930 and those recommended in substitution are set out in full in paragraph 7 of the committee's report (g), and effect was given to the new timetable by an extensive amendment of the standing orders on 29 July 1930 (h).

#### COMPLIANCE AFTER INTRODUCTION OF BILL

In addition to the standing orders above alluded to, there are others (Nos. 60-68 of both Houses), the compliance with which is proved after the introduction of the bills into Parliament (see pp. 896-98).

#### COMPLIANCE PROVED BEFORE THE EXAMINERS

Compliance with the standing orders was formerly required to be separately proved—in the Commons, before the committees on petitions for private bills, and in the Lords, before the Standing Orders Com-

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(e) For private bills which have not been treated as name, estate, or personal bills, but in the case of which it was reported that no standing orders were applicable, see Ascot Authority Bill (Lords), L. J. (1913) 154; C. J. (1913) 253; Rhodes Estate Bill (Lords), L. J. (1916) 137.

(f) Since the revision carried out by both Houses in 1945 the sequence and content of Standing Orders 1 to 68 is the same for both Houses, there being, however, one Lords' order (30A), "deposit of map in case of bill for taking water supply" which has no counterpart in the Commons.

(g) H. C. 158, pp. vii-x (1930)

(h) C. J. (1929-30) 483.

mittee. But in 1846 the House of Commons provided, by standing order, for the appointment of one or more "Examiners of petitions for private bills" (i), instead of the committees previously appointed. A few years later, in 1854, the Lords resolved, "That there shall be one or more officers of this House, to be called 'the Examiners for standing orders,' " to examine into certain of the facts required to be proved before their Standing Orders Committee; they then appointed as their Examiners the gentlemen who held the office of Examiners of petitions in the House of Commons; and finally, in 1858, they entrusted to these officers the same powers which they had previously exercised as Examiners for the Commons. This most convenient arrangement has enabled the Examiners to take the evidence on behalf of both Houses simultaneously, and has obviated the necessity for a double proof of all those orders, common to both Houses, with which parties, at a heavy expense and with an interval of some months between the proofs, were formerly obliged to prove compliance twice over. The two Examiners, therefore—appointed by the House of Lords and the Speaker—now conduct, for both Houses, the preliminary investigations formerly carried on separately in each House: they adjudicate upon all facts relating to the compliance or non-compliance with the standing orders; and, in those cases where they find that standing orders have not been complied with, the Standing Orders Committee in each House (see pp. 852, 960) determine, upon the facts as reported by the Examiners, whether these orders ought or ought not to be dispensed with.

When the Examiner has found that the standing orders have not been complied with in the case of a petition for a bill, and the Standing Orders Committee of the House in which the bill originates have reported that they should be dispensed with, the Standing Orders Committee of the second House do not defer their decision until the bill reaches their House, but at once consider and pronounce upon the Examiner's report also. By adopting this course they obviate the possibility of a promoter proceeding with his bill through the first House and then finding its subsequent progress barred by a different decision being given upon its reaching the second House, from that of the Standing Orders Committee in the first House. In practice, the view taken by both committees in these cases has, as a rule, been the same.

#### GENERAL LIST OF PETITIONS (S.O. 194 (H. C.))

When all the petitions for private bills, with printed copies of the bills annexed, have been deposited, on or before 27 November, in the Committee and Private Bill Office of the House of Commons, and printed copies of the bills have been deposited, on or before the same date, in the Parliament Office in the House of Lords (S.O. 38 (H. L.)), "The General List of Petitions for Bills" is prepared. The regulations in accordance with which this list is made out give every facility to the promoters of a bill to select for themselves whatever position may be most convenient. The petitions are numbered, and arrangements are made for them to be heard by the Examiners, as far as possible

(i) Now S.O. 69; and cf. report of Select Committee for Revision of the Standing Orders 1846, C. J. (1846) 1262.

in the order in which they appear on the General List, the convenience of the parties being the primary consideration.

## MEMORIALS COMPLAINING OF NON-COMPLIANCE

### IN RESPECT OF PETITIONS FOR BILLS NUMBERED IN THE GENERAL LIST

When the time has expired for depositing documents and complying with other preliminary conditions, parties interested are enabled to judge whether the standing orders of the two Houses have been complied with. If it should appear to them that the promoters have neglected to comply with any of these orders, parties may prepare memorials, addressed to the Examiners, complaining of such non-compliance. These memorials, in respect of petitions for bills which have been deposited on or before 27 November, are to be deposited in the Committee and Private Bill Office of the House of Commons on or before 17 December, with two copies of each memorial for the use of the Examiners, as laid down by S.O. 195 (H.C.) and the rules included in the Lords' standing orders.

### IN RESPECT OF PETITIONS FOR BILLS DEPOSITED AFTER 27 NOVEMBER

In the case of any petitions for bills which may be deposited by leave of the House after 27 November, S.O. 195 (H. C.) also prescribes that such memorials shall be deposited not less than three clear days before the day first appointed for the examination of the petition. In the event of this period expiring during an adjournment of the House other than an adjournment from Friday to the following Monday, the time is extended by S.O. 189 (H. C.) to the first day on which the House sits after the adjournment. S.O. 78 (H. L.) prescribes that such memorials shall be deposited before twelve o'clock on the day preceding that appointed for the examination.

### IN RESPECT OF PETITIONS FOR ADDITIONAL PROVISIONS, ETC.

S.O. 195 (H. C.) and S.O. 78 (H. L.) provide for the case of memorials in respect of additional provisions. The Commons' order refers also to bills brought from the Lords or introduced by leave of the House in lieu of others withdrawn ; while the Lords' order includes bills referred to the Examiners after first reading or by direction of the Chairman of Committees. In all these cases the memorial is to be deposited before twelve o'clock on the day preceding that appointed for the examination. As far as the Commons' order is concerned, the Examiner is at liberty to entertain the memorial, although it is not signed by the party specially affected by the non-compliance with the standing orders. S.O. 75 (H. C.), S.O. 76 (H. L.).

### PREPARATION OF MEMORIALS

Memorials complaining of non-compliance are prepared in the same form, and are subject to the same general rules, as petitions to the

House (see p. 795), as well as to other special rules, which will be noticed immediately (pp. 849-50).

### SITTINGS OF THE EXAMINERS

The public sittings of the Examiners commence on 18 December, unless that day falls on a Saturday or Sunday, in which case they commence on the Monday following that date (S.O. 70 (H. C.), and (H. L.)). As stated above, the convenience of the parties is consulted regarding the order in which the petitions are set down, though it conforms as far as possible to their place on the General List of Petitions.

### NOTICE OF EXAMINATION

The Examiner is required by S.O. 71 (H. C.) to give at least seven clear days' notice, in the Committee and Private Bill Office of the Commons, of the day appointed for the examination of each petition.

### DAILY LISTS OF UNOPPOSED AND OPPOSED PETITIONS

Daily lists are issued of the cases set down for hearing before each of the Examiners; but to expedite the examination of the unopposed petitions for bills, the cases set down are divided, in this daily list, into "unopposed" and "opposed" petitions, the former being placed first on each day. Thus, by precedence being given, on each day, to the unopposed petitions, the numerous agents and witnesses are relieved from attendance during the subsequent hearing of opposed cases which may occupy a considerable time.

### STRIKING OFF AND REINSERTION OF PETITIONS. (S.O. 71, 106 (H. C.))

In case the promoters shall not appear at the time when their petition comes on to be heard, the Examiner is required to strike the petition off the General List of Petitions. The petition cannot afterwards be reinserted on the list, except by order of the House; and should the promoters desire to proceed with the bill, it will be necessary to deposit a petition, praying that the petition for the bill may be reinserted, and explaining the circumstances under which it had been struck off. This petition will stand referred to the Standing Orders Committee, who will determine, upon the statement of the parties, whether the promoters have forfeited the right to proceed or not, and will report to the House accordingly (*k*); and if by the order of the House the petition for the bill should be reinserted in the General List, the usual notice will be given by the Examiner, and the case will be heard at the appointed time.

### STATEMENT OF PROOFS

When the case is called on, the agent soliciting the bill appears before the Examiner with a "statement of proofs," showing all the requirements of the standing orders applicable to the bill, which have been complied

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(*k*) C. J. (1874) 73.

with, and the name of every witness, opposite each proof, who is to prove the matters stated therein. If the bill be opposed on standing orders, the agents for the memorialists are required to enter their appearances upon each memorial, at this time, in order to entitle them to be heard subsequently.

The appearance is a paper, which is previously obtained from the Committee and Private Bill Office, certifying that the agent has entered himself at that office as agent for the memorial. This appearance is given to the clerk to the Examiners.

#### FORMAL PROOFS

In the meantime the "formal proofs," as they are termed, proceed generally in the same manner, both in opposed and unopposed cases. Each witness is examined by the agent, who produces all affidavits and other necessary proofs, in the order in which they are set down in the statement, one fair copy of which is required for the Examiner, and another for the clerk to the Examiners; and in addition to the proofs comprised in the statement, the Examiner requires such other explanations as he may think fit, to satisfy him that all the orders of the House have been complied with.

#### PROOF BY AFFIDAVIT (S.O. 77 (H. C.), S.O. 80 (H. L.))

Under the standing orders of both Houses, the Examiner may admit affidavits in proof of the compliance with the standing orders, or may require further evidence.

#### UNOPPOSED CASES

In an unopposed case the Examiner can at once give his decision whether the standing orders have, or have not, been complied with, and endorse the petition for the bill accordingly.

#### OPPOSED CASES

In an opposed case, when the formal proofs have been completed, the Examiner proceeds to hear the memorialists. The agents for the latter ordinarily take no part in the proceedings upon the formal proofs: but if they desire that any of the promoters' witnesses who have proved the deposit of documents, the service of notices, or other matters, should be detained for further examination, in reference to allegations of error contained in the memorials, the Examiner directs them to be in attendance until their evidence shall be required.

#### ATTENDANCE OF WITNESSES

The attendance of witnesses is ordinarily secured by the parties themselves: but if the Examiner should report to the House that the attendance of any necessary witness, or the production of any document,

cannot be procured without the intervention of the House, the House will make an order accordingly (*l*).

#### HEARING OF PARTIES ON A MEMORIAL (S.OS. 75, 76 (H. C.), S.OS. 76, 77 (H. L.))

Any parties are entitled to appear and to be heard, by themselves, their agents and to tender evidence, upon a memorial, addressed to the Examiner and duly deposited, complaining of non-compliance with the standing orders, provided that the matter complained of be specifically stated in such memorial, that the party (if any) who may be specially affected by the non-compliance with the standing orders shall have signed such memorial and shall not have withdrawn his signature thereto, and that such memorial shall have been duly deposited. In the case of certain bills which are referred to the Examiners under the "Wharnccliffe" standing orders of both Houses (pp. 896-98, 960), any proprietor or member of any company, society, association, or partnership, who shall by himself, or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of these standing orders, shall be permitted to be heard by the Examiner on the compliance with such standing order, by himself, his agents and to tender evidence, upon a memorial addressed to the Examiner, and duly deposited.

#### SPECIFIC STATEMENTS OF NON-COMPLIANCE REQUIRED

Unless the matters complained of be specifically stated in the memorial, the memorialists are not entitled to be heard, and the utmost care is consequently required in drawing memorials. When a memorial complains of more than one breach of the standing orders, it is divided into distinct allegations. Each allegation should specifically allege a non-compliance with the standing orders, and should state the circumstances of such alleged non-compliance, in clear and accurate language.

#### PRELIMINARY OBJECTIONS

When the agent for a memorial rises to address the Examiner, the agent for the bill may raise preliminary objections to his being heard upon the memorial, on any of the grounds referred to in the standing orders, or on account of violations of the rules and usage of Parliament, or other special circumstances. Such objections are distinct from any subsequent objections to particular allegations. It has been objected, for example, that a memorial has not been duly signed, so as to entitle the parties to be heard. No proof of the signatures, however, is required in any case, unless there should be some *prima facie* reason for doubting their genuineness. The same rule is applied to the fixing of a corporate seal.

#### MEMORIALS SUBJECT TO SAME RULES AS PETITIONS

On 16 February 1846 an instruction was given to the committee on petitions for private bills (the predecessors of the Examiners) not

(*l*) Wandle Water and Sewerage Bill: C. J. (1852-53) 257; Bristol and North Somerset Railway (Southern Extension) Bill, *ibid.* (1866) 114, 127.

to hear parties on any petition " which shall not be prepared in strict conformity with the rules and orders of this House " (*m*). As memorials addressed to the Examiner have supplied the place of petitions to the House, complaining of non-compliance with the standing orders, the Examiners have applied to them all the parliamentary rules applicable to petitions (see p. 795); and have otherwise followed the practice of the committees on petitions for private bills.

#### PRELIMINARY OBJECTIONS TO ALLEGATIONS

If no preliminary objection be taken to the general right of the memorialists to appear and be heard, or if it be overruled, the agent proceeds to read the first allegation in his memorial. Preliminary objections can be raised to any allegation; as, that it alleges no breach of the standing orders; that it is uncertain, or not sufficiently specific; or that the party specially affected has not signed the memorial, or has withdrawn his signature. In reference to the latter grounds of objection, it may be explained that by numerous decisions of the committees on petitions for bills and of the Examiners, the signatures of parties specially affected are required in reference to such allegations only as affect parties personally, and in which the public generally have no interest. Thus if it be alleged that the name of any owner, lessee, or occupier of property has been omitted from the book of reference, or that he has received no notice, the Examiner will not proceed with the allegation, unless the party affected has himself signed the memorial. But in the application of this rule, considerable niceties may arise from the peculiar circumstances of each case.

#### OBJECTIONS ON POINTS AFFECTING THE PUBLIC

There are numerous grounds of objection which relate to matters concerning the public, and do not therefore require the signatures of parties specially affected. Thus objections to the sufficiency of newspaper notices, and objections to the accuracy of the plans, sections, and books of reference where the errors alleged are patent upon such documents, or are separable from questions relating to property in lands and houses, have always been treated as public objections. The same principle has been applied to objections to the estimate, or deposit of money; and to allegations that any documents have not been deposited in compliance with the standing orders. It is for public information and protection that all requirements of this character are to be complied with by the promoters of the bill; and any person is therefore entitled to complain of non-compliance on behalf of the public, without proving any special or peculiar interests of his own.

#### QUESTIONS OF MERITS EXCLUDED

Allegations are to be confined to breaches of the standing orders, and may not raise questions impugning the merits of the bill, which are afterwards to be investigated by Parliament and by committees of

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(*m*) C. J. (1846) 147.

both Houses. It may be shown, for example, that an estimate is informal, and not such an estimate as is required by the standing orders : but the insufficiency of the amount of the estimate is a question of merits, over which the Examiner has no jurisdiction. Again, in examining the accuracy of the section of a proposed railway, the Examiner will inquire whether the surface of the ground is correctly shown, or the gradients correctly calculated ; but he cannot entertain objections which relate to the construction of the work, its engineering advantages, its expense, or other similar matters, which will be afterwards considered by the committee on the bill.

## DECISIONS OF THE EXAMINERS

### ENDORSEMENT ON PETITION (S.O. 72 (H. C.))

The Examiner decides upon each allegation, explaining to parties, whenever it is necessary, the grounds of his decision ; and he certifies by endorsement on each petition whether the standing orders have or have not been complied with. The petitions, when endorsed, are returned to, and retained in, the Committee and Private Bill Office of the House of Commons.

### COMMUNICATION OF EXAMINERS' DECISIONS

When Parliament has met, the decisions of the Examiners upon the petitions for private bills are communicated to both Houses in the following form.

(a) **To the House of Commons.**—By S.Os. 72 and 78 (H. C.) the Examiner is required to report to the House whether the standing orders have or have not been complied with in each case, including those bills which it has been decided shall originate in the House of Lords (see p. 860). Where the standing orders have not been complied with, he must also report the facts upon which his decision is founded and any special circumstances connected with the case.

(b) **To the House of Lords.**—The provisions of S.O. 72 (H. L.), which apply to bills originating either in that House or the House of Commons, prescribe that the Examiner should certify in each case whether the standing orders have or have not been complied with, such certificate to be deposited in the office of the Clerk of the Parliaments. In cases of non-compliance he must report the facts upon which his decision is founded and any special circumstances.

### SPECIAL REPORT FROM THE EXAMINERS (S.O. 79 (H. C.), S.O. 81 (H. L.))

Under standing orders in both Houses, if the Examiner feels doubts as to the true construction of any standing order in its application to a particular case, he is to make a special report of the facts, without deciding whether the standing order has or has not been complied with.



This report is referred to the Standing Orders Committee in each House (*n*).

### STANDING ORDERS COMMITTEE (HOUSE OF COMMONS) (*o*)

The composition of the Standing Orders Committee is prescribed by S.O. 103 (H. C.). It consists of the Chairman of Ways and Means, who, when present, is ex-officio chairman of the committee, the Deputy Chairman, and not less than two members from time to time selected by the Chairman of Ways and Means from a panel appointed by the Committee of Selection at the commencement of every session. The quorum of the committee is three, and the committee have the assistance of the Counsel to Mr. Speaker.

#### EXAMINERS' REPORTS REFERRED (S.Os. 104, 108 (H. C.))

To this committee are referred all the reports of the Examiners of petitions for private bills in which they report that the standing orders have not been complied with, whether the bills originate in the Lords or in the Commons. The committee have to determine and to report to the House, in each case, whether the standing orders not complied with ought or ought not to be dispensed with, and whether, in their opinion, the parties should be permitted to proceed with their bill, or any portion of it, and upon what terms and conditions (if any).

#### EXAMINERS' SPECIAL REPORTS REFERRED (S.O. 104 (H. C.))

All special reports made by the Examiner are also referred to the Standing Orders Committee. In any case where the Examiner has made a special report under S.O. 79 "as to the construction of a standing order," the committee have to determine, according to their construction of the order, and on the facts stated in the report, whether the standing orders have or have not been complied with; and they either report to the House that the standing orders have been complied with or, if not complied with, proceed to consider whether the standing orders ought to be dispensed with (*p*).

In 1901 a special report made by the Examiner regarding a provisional order bill (originating in the Commons) which had been referred to him by that House after being reported from a committee, was referred to the Standing Orders Committee who reported that no standing orders not previously inquired into were applicable (*q*).

#### PROCEEDINGS OF THE STANDING ORDERS COMMITTEE

According to the usual practice of this committee, written statements are prepared by the agent for the bill, and in opposed cases by the agent

(*n*) Great Grimsby Street Tramways Bill, 1900, C. J. (1900) 64-5, 95; L. J. (1900) 36, 70. Durham County Water Board Bill [Lords]; C. J. (1933-34) 49. Sunderland Corporation Bill (petition for additional provision), 1935, C. J. (1934-35) 160, 173; L. J. (1934-35) 142, 169. See also L. J. (1914) 91 for similar proceedings in the case of a provisional order bill.

(*o*) The Standing Orders Committee of the House of Lords is described on p. 960 below.

(*p*) C. J. (1934-35) 160, 173.

(*q*) C. J. (1901) 302, 307, 318.

for the bill on the one side, and on the other by the agents for memorialists who have been heard by the Examiner. When these statements have been read by the committee they determine whether the standing orders ought or ought not to be dispensed with, and whether "the parties should be permitted to proceed with their bill, and upon what terms and conditions (if any)." The parties are called in and acquainted with the determination of the committee, which is afterwards reported to the House. It is not usual to hear the parties, except for the explanation of any circumstances which are not sufficiently shown by the written statements, and in opposed cases, when the speeches of agents are limited to one on each side, although on one side there may be several parties interested (r). But in some inquiries of a special character which have been referred to the committee, they have also examined witnesses (s) before they have agreed to their report.

In 1900, in the case of a hybrid bill with regard to which the Examiners had reported a non-compliance, certain parties opposing the bill, who had not appeared before the Examiners, were allowed to appear before the Standing Orders Committee, their petition against dispensing with the standing orders having been specially referred to the committee by the House (t).

#### PRINCIPLES BY WHICH THE STANDING ORDERS COMMITTEE ARE GUIDED

The committee, in their report to the House, do not explain the grounds of their determination; but the principles and general rules by which they are guided may be briefly stated. The report of the Examiner being conclusive as to the facts, it is the province of the committee to consider equitably, with reference to public interests and private rights, whether the bill should be permitted to proceed. If the promoters appear to have attempted any fraud upon the House, or to be chargeable with gross or wilful negligence, they will have forfeited all claim to a favourable consideration. But assuming them to have taken reasonable care in endeavouring to comply with the orders of the House, and that their errors have been the result of accident or inadvertence, not amounting to laches, their case will be considered according to its particular circumstances. The committee will then estimate the importance of the orders which have been violated, the character and number of separate instances of non-compliance, the extent to which public and private interests may be affected by such non-compliance, the importance and pressing nature of the bill itself, the absence of opposition, or other special circumstances. And, according to the general view which they may take of the whole of the circumstances, the committee will report either that the standing orders ought not to be dispensed with, or that they ought to be dispensed

(r) As to the practice on this point of the Standing Orders Committee in the Lords, see p. 960.

(s) Edinburgh and Perth Railway Bill, C. J. (1847) 226, 293; and evidence printed at the expense of the parties, Edinburgh and Northern Railway Bill, *ibid.* (1849) 37, 48, 70; Great Central Railway (Grimsby Fish Dock) Bill, recommended resolution, *ibid.* (1912-13) 134, 155, 162.

(t) C. J. (1900) 285, 297, 302, 320 (Military Manœuvres Bill).

with and parties be permitted (subject, or not subject, to any conditions) to proceed with their bill.

#### STANDING ORDERS DISPENSED WITH AND LEAVE GIVEN TO PARTIES TO PROCEED

If the Standing Orders Committee report that the standing orders ought to be dispensed with, the House, by agreeing with the committee's resolution, gives the parties leave to proceed; and where any conditions are specified in the committee's report, the necessary compliance with them is required to be proved, in ordinary cases, before the committee on the bill (*u*), or, in some special cases, before the Examiners (*a*).

In the Bristol Tramways (Extensions) Bill, 1904, compliance with some of the prescribed conditions (connected with the preliminary standing orders applicable to tramways, etc.) was required to be proved before the Examiners, and compliance with others before the committee (*b*).

#### STANDING ORDERS NOT TO BE DISPENSED WITH

If the Standing Orders Committee report that the standing orders ought not to be dispensed with, their decision is generally acquiesced in by the promoters, and is fatal to the bill. But in order to leave the question still open for consideration, the House agrees to those resolutions only which are favourable to the progress of bills, and passes no opinion upon the unfavourable reports, which are merely ordered to lie upon the table.

#### DECISION OF STANDING ORDERS COMMITTEE OBJECTED TO IN THE HOUSE

Occasionally, exception has been taken to a decision of the Standing Orders Committee, and the House has ordered that the case be referred back to them for consideration, though in certain exceptional cases an alternative course has been taken.

Sometimes the promoters of a bill have not wished to disturb the decision of the Standing Orders Committee but have still entertained hopes that the House might be induced to relax the standing orders, or have been willing to abandon portions of their bill. Again, there may be special circumstances, such as the consent of all parties or the urgent necessity of the bill being passed in the current session. In such cases the promoters deposited a petition, praying for leave to deposit another petition for a bill, and stating fully the grounds of their application. The Standing Orders Committee reported to the House upon this petition whether, in their opinion, the parties should have leave to deposit a petition for a bill (*c*); and, unless such leave were refused (*d*), the petition for a bill was deposited in the Private Bill Office, and was examined and endorsed by the Examiner in the same manner as if it had been originally deposited at the prescribed time. The

(*u*) C. J. (1854) 78; *ibid.* (1904) 38.

(*a*) C. J. (1849) 70 (as to deposit of amended notices); *ibid.* (1849) 81, 84 (of Estimate, etc.); *ibid.* (1886) 205 (of amended plans).

(*b*) C. J. (1904) 99, 105.

(*c*) Manchester and Southampton Railway, C. J. (1847) 220, 228, 269; Bagenalstown and Wexford Railway, *ibid.* (1854) 77, 89, 120, 135; South London Railway, *ibid.* (1860) 69, 94; Hastings Western Water, *ibid.* (1861-62) 92, 139.

(*d*) Southam Railway, C. J. (1863) 68, 102.

standing orders, previously reported not to have been complied with, were taken to have been dispensed with; and, unless any further breaches were discovered (*e*), the Examiner reported that the standing orders had been complied with.

The more usual practice, however, is for the House to refer the report back to the Standing Orders Committee, and of this practice several examples are given below.

In the case of the West Riding Union Railway Bill, 1846, the committee had decided that the standing orders ought *not* to be dispensed with; but by a clerical error it was reported that the standing orders ought to be dispensed with, and a bill was ordered to be brought in. The report was referred back to the committee, and the subsequent proceedings declared null and void. The committee again decided that the standing orders ought not to be dispensed with, and so reported to the House: but the promoters subsequently presented a petition for leave to present a petition for a bill, and their second bill ultimately received the Royal Assent (*f*).

In the case of the Liverpool Tramways Bill, 1867, notice being taken that a report of the Standing Orders Committee was incorrect, it was referred back to them (*g*).

In the case of the Filey Gas and Water Bill, 1898, a resolution of the committee was referred back on the motion of the chairman of the committee, as some misconception had arisen as to its meaning (*h*).

In the case of the Albert Station and Mid-London Railway Bill, 1863, the resolution of the committee, in which they had refused to dispense with the standing orders, was recommitted, and a petition referred to the committee, with an instruction to inquire and report whether the special circumstances stated were such as to render it just and expedient that the standing orders should be dispensed with; but the committee, after investigation, repeated their resolution that the orders ought not to be dispensed with (*i*). In 1883, in the case of the Dundalk Water Bill, the Committee having reported that the standing orders ought not to be dispensed with, the report was recommitted; but the committee adhered to their previous decision (*h*).

In 1870, certain resolutions of the committee with the bills and the reports of the Examiners, were referred back to the committee, and petitions were referred to them, with an instruction to report whether special circumstances rendered it expedient that the standing orders should be dispensed with. The report was favourable, and the bills were permitted to proceed (*l*).

In 1886, in the case of the Felixstowe, Ipswich, and Midlands Railway Bill, the Standing Orders Committee having refused to dispense with the standing orders, their resolution was referred back to them; and the committee then reported that the standing orders should be dispensed with, subject to certain proofs being given before the Examiner, and that the committee on the bill should report how far this condition had been complied with (*m*).

(*e*) C. J. (1847) 474.

(*f*) C. J. (1846) 176, 185, 200, 223, 252.

(*g*) C. J. (1867) 66.

(*h*) Parl. Deb. (1898) 55, c. 726-7.

(*i*) C. J. (1863) 145, 165.

(*k*) C. J. (1883) 87, 121, 129.

(*l*) C. J. (1870) 78, 106, 114; and cf. also *ibid.* (1862) 307, 311 (Great Northern and Western (of Ireland) Railway Bill), and *ibid.* (1890) 255, 267 (Richardson and Company (Warrants) Bill).

(*m*) C. J. (1886) 196, 205. Cf. also *ibid.* (1887) 234, 244, 255; *ibid.* (1919) 149, 165, 219, 229; H. C. Deb. (1919) 117, c. 1979.

In 1911, in the case of a petition for additional provision in the Macclesfield and District Railless Traction and Electricity Supply Bill [Lords] the committee reported that the standing orders ought not to be dispensed with. The resolution was referred back to the committee who were given power to inquire whether there were any special circumstances which rendered it just and expedient that the standing orders should be dispensed with in respect of the petition. The committee reported that the standing orders ought to be dispensed with provided that an advertisement in terms prescribed by the committee was published in a local newspaper (*n*).

In 1912, the Examiner's report that the standing orders had not been complied with in the case of the petition for the Great Central Railway (Grimsby Fish Dock) Bill [Lords] was referred to the Standing Orders Committee who reported that the standing orders ought not to be dispensed with. Their report was referred back to them and they were given the same powers as in the previous case. The committee made a special report to the House that they had satisfied themselves from evidence given that the work proposed in the bill was a matter of urgent public importance. They accordingly recommended that compliance with the standing orders should be dispensed with, but did not desire their decision to be regarded as a precedent (*o*).

The House has also referred back to the committee a resolution refusing to dispense with S.O. 129 in the case of a petitioner against a bill (*p*) (see p. 872). Motions to refer back resolutions to the Committee have occasionally been negatived (*q*).

#### SPECIAL REPORTS FROM STANDING ORDERS COMMITTEE

The Standing Orders Committee have on occasion made a special report to the House.

In 1920 the Examiner reported in the case of certain tramway bills that S.O. 22 (now 25) had not been complied with, inasmuch as the consent of some local authorities had not been obtained to the proposed tramways. The Standing Orders Committee made a special report to the House that they did not feel justified in exercising their discretion in the matter without direction from the House. A motion was made in the House in favour of dispensing with the standing orders, to which a reasoned amendment was moved. The question that the words proposed to be left out stand part of the question was negatived, but the insertion of the alternative words could not be proceeded with owing to the interruption of business under S.O. No. 1 (Public). Acting on these proceedings in the House, the Standing Orders Committee at a subsequent meeting resolved "that S.O. 22 (now 25) ought not to be dispensed with; that the parties be permitted to proceed with their bill, on condition that all the provisions as to tramways, to which S.O. 22 (now 25) relates and which have not been complied with, be struck out of the bill; that the committee on the bill do report how far such order has been complied with" (*r*).

In 1923 the Examiners made a special report in the case of the petition for the Londonderry and Lough Swilly Railway Bill, stating that they felt doubts as to the due construction of the standing orders in relation to the petition, inasmuch as the bill applied to the Irish Free State and Northern

(*n*) C. J. (1911) 225, 241, 252.

(*o*) C. J. (1912-13) 85, 134, 155, 162.

(*p*) C. J. (1905) 61, 117, 128 (the S.O. was then 128).

(*q*) C. J. (1884-85) 296; *ibid.* (1905) 177.

(*r*) C. J. (1920) 11, 53, 121, 134, 135

Ireland and they were unable to find any instructions in the standing orders directing them to deal with such a case, and further reported that the standing orders, if they did apply, had not been complied with. The Standing Orders Committee made a special report to the House stating that they entertained grave doubt as to whether it was competent for the promoters, a company domiciled in Northern Ireland, to apply for a private bill in the House, if the subject matter of the private bill related to Ireland, and asked for directions from the House. Further action, however, was not taken by the House (s).

In 1924 a similar bill which originated in the House of Lords contained a clause safeguarding the interests of the Irish Free State and was allowed to proceed (t).

#### OTHER DUTIES OF STANDING ORDERS COMMITTEE (S.Os. 105, 106 (H. C.))

The proceedings of the Standing Orders Committee in regard to reports from the Examiners will be again referred to, incidentally, when dealing with bills referred to the Examiners after introduction (see p. 896), and with petitions for additional provision (see p. 862). Besides the Examiners' reports, however, there also stand referred to this committee all petitions, which have been deposited in the Committee and Private Bill Office, praying that any of the sessional or standing orders of the House may be dispensed with—or that petitions for private bills, which have been struck off the General List by the Examiners, may be reinserted (u)—and all petitions opposing the same; and the committee report their opinion upon such petitions to the House. Other matters, also, are sometimes referred to the Standing Orders Committee; and their duties in reference to clauses and amendments which may be referred to them, in accordance with S.O. 182, will be noticed later (p. 952).

In the case of the Blackrock and Kingstown Tramways Bill, 1882, petitions presented by certain parties (praying that the bill might be referred to the Examiner to inquire as to the legality of the sealed bill produced before him in the proof of compliance with standing orders) were referred to the Standing Orders Committee who reported thereon to the House (a).

#### COMMITTEE OF SELECTION (HOUSE OF COMMONS) (b)

The Committee of Selection, first appointed by resolution of the House in 1839 (c), is a sessional committee nominated under S.O. 109 (H. C.), and has consisted since 1908 of eleven members nominated by the House at the commencement of every session, three being the quorum of the committee (d).

Between 1847 and 1908 the Committee of Selection consisted of the chairman of the Standing Orders Committee and other members nominated by the House. The number of these other nominated members was gradually

(s) C. J. (1923) 148, 160; H. C. 77 (1923).

(t) C. J. (1924) 276.

(u) Cf. *supra*, p. 847.

(a) C. J. (1882) 81, 95.

(b) The Committee of Selection of the House of Lords is described on p. 962 below.

(c) C. J. (1839) 67.

(d) C. J. (1908) 24.

increased from four to five in 1854 (*e*), from five to seven in 1883 (*f*), and from seven to ten in 1903 (*g*).

The duties of the Committee of Selection in relation to public committees have been described in Chapter XXI. Its duties in relation to private business are laid down in S.Os. 109 to 118, and 229 (H. C.), and a general outline of its proceedings is all that need be given here. The committee are responsible for nominating and filling vacancies on—

- (a) The panel for the consideration of unopposed private bills.
- (b) Committees on opposed private bills.
- (c) The Standing Orders Committee panel.
- (d) The Parliamentary panel to act as Commissioners under the Private Legislation Procedure (Scotland) Act, 1936.
- (e) Members to serve on joint committees on Scottish provisional order bills.

If so ordered by the House, the committee also nominate members of specially constituted committees on private bills and members to serve on joint committees on private bills and fill any vacancy occurring amongst Members nominated by themselves. In the exercise of its various duties, the Committee of Selection is empowered by S.O. 118 to send for persons, papers, and records. Further details of the committee's activities will be described in connection with the committal of bills.

The General Committee on Railway and Canal Bills formerly performed some of the functions of the Committee of Selection in respect of such bills. The standing order under which it was appointed was repealed in August, 1921 (*h*), and the committee no longer exists.

## SUPERVISION OF PRIVATE BILLS BY CHAIRMAN OF COMMITTEES AND CHAIRMAN OF WAYS AND MEANS

The supervision of private bills through all their stages by responsible officers originated in the Lords, but it will be convenient to advert to it generally at this point.

### BY THE LORDS' CHAIRMAN AND HIS COUNSEL

The office of Chairman of Committees in the Lords was first constituted in 1800, when the House resolved that it would, "at the commencement of every session, proceed to nominate a Chairman of Committees of this House" (*i*). According to a further resolution, which was passed at the same time, and is now embodied in No. XLI (Public) of the Lords' standing orders, the lord so nominated "shall take the chair in all committees upon private bills unless where it shall have been otherwise directed by this House" (*k*). So far as they are conferred upon him by this and other standing orders, the powers and duties of the Lords.

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(*e*) C. J. (1854) 410.

(*f*) C. J. (1883) 52-3.

(*g*) C. J. (1903) 33.

(*h*) C. J. (1921) 320.

(*i*) L. J. (1800) 636.

(*k*) As to the appointment of other peers to take the place of the chairman during his absence through illness, see p. 965.

Chairman in regard to private bills will be noticed below (see also pp. 960-61). The practical character which his supervision of all private bills has acquired, however, is rather attributable, in part to the fact that it was exercised for nearly fifty years before the House of Commons in 1848, adopted a similar system—in part, also, to the duty, which in practice has long rested primarily with the Lords' Chairman, of moving the several stages of private bills in that House. When he moves the second or third reading of a bill, his action is an assurance to the House that in his opinion there is no objection to the passing of that particular stage. If he entertains such an objection, the stage is moved by another lord, the Chairman stating his objection in the course of debate before the sense of the House is taken.

If any lord opposes the second or third reading of a private bill the stage is moved by another lord—not by the Chairman, who is thus left free to express his opinion in debate (*l*).

The Counsel to the Chairman of Committees was first appointed shortly after the office of Chairman was constituted in 1800, and he became a permanent salaried officer of the House of Lords in 1808 (*m*).

#### COPIES OF BILLS INTRODUCED INTO EITHER HOUSE SUPPLIED TO LORDS' CHAIRMAN

To facilitate his examination of private bills (*n*), copies are supplied to the Lords' Chairman and his Counsel upon its first deposit, of every private bill proposed to be introduced into either House. Copies are again supplied to them of the bill, in its "filled-up" form (*o*) as proposed by the promoters to be submitted to a committee, and at every other stage upon which it is amended, or proposed to be amended, in either House. In the case of a bill originating in the Commons this practice is greatly for the convenience of promoters. It enables them to give effect, during the progress of their bill through that House, to the observations of the Lords' Chairman and his Counsel; and, unless the bill is opposed, its subsequent progress through the House of Lords is at once easy and expeditious owing to the facilities thus afforded, before the bill has passed the Commons, of securing the insertion of amendments suggested by the authorities in the Lords. Another possible advantage of this mode of amending the bill, whilst it is still in the Commons, is that amendments may then be conveniently introduced, which could not be made by the Lords without infringing the privileges of the Commons.

#### SUPERVISION BY CHAIRMAN OF WAYS AND MEANS AND SPEAKER'S COUNSEL

For many years after this supervision of private bills had been instituted in the Lords, the House of Commons, relying upon the aid

(*l*) Cf. Parl. Deb. (1906) 153, c. 1053; H. L. Deb. (1913) 14, c. 91; *ibid.* (1933) 86, c. 1191.

(*m*) L. J. (1806-08) 792.

(*n*) As to the "Model Bill," or collection of model clauses and precedents by which the work of the office of Chairman of Committees is materially aided, see p. 843.

(*o*) Cf. S.O. 123 (H. L.).



which its legislation received from the other House, did not adopt any similar arrangement of its own ; but, as private business increased in importance, the House gradually entrusted to the Chairman of Ways and Means many duties analogous to those performed by the Chairman of Committees in the House of Lords ; and since 1848 he has been charged with the supervision of all private bills (*p*). Under S.O. 82 of the House of Commons, it is his duty, with the assistance of the Counsel to Mr. Speaker, to examine all such bills whether opposed or unopposed, and to call the attention of the House, and also of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it. To facilitate this examination, copies of every bill as originally deposited are required to be laid before him and Mr. Speaker's Counsel not later than the day after the Examiner of Petitions shall have endorsed the petition for the bill. And copies of every bill, and of amendments made or proposed to be made in it, are also required under S.Os. 84, 86, 87, 88, 180, to be laid before him and the Speaker's Counsel, at various later stages in its progress through the House of Commons. The Chairman's duties and powers under these and other standing orders, *e.g.* 85, 181, 182, will be noticed when these later stages are described.

The Counsel to Mr. Speaker was originally appointed to assist the Speaker generally in any legal questions coming before him and to discharge certain other duties in accordance with the report of a select committee of 1838. But it was not until 1850, as a result of another select committee in that year, that he was regularly associated with the Chairman of Ways and Means to assist in the examination of private bills (*q*).

### DIVISION OF BILLS BETWEEN THE TWO HOUSES BEFORE INTRODUCTION

In accordance with S.O. 81 (H. C.) (*r*) the Chairman of Ways and Means, or the Counsel to Mr. Speaker, seeks a conference on or before 8 January in each year, with the Chairman of Committees of the House of Lords or his Counsel, for the purpose of determining in which House the respective private bills shall be first considered. Since this power has been delegated to the Chairmen, their decision as to the House in which a bill shall originate is final (*s*). The examination of all private bills by the Chairmen and their Counsel begins in practice at an earlier date, as soon as the bills have been deposited in November ; and, for the sake of convenience, the division of the bills between the two Houses is usually decided each year before Christmas.

Formerly, by far the greater number of private bills were necessarily introduced first in the House of Commons ; as, by the privileges of the Commons, every bill which involves any pecuniary charge or burthen

(*p*) See Report of Select Committee on the Method of improving Private-Business Procedure, 1847-8 ; H. C. Deb. (1935-6) 315, c. 1423.

(*q*) See reports of the Select Committee (House of Commons) on Private Business, 1838 and 1851, second report of the Select Committee to inquire into the working of the Preliminary Inquiries Acts, 1850, and Clifford, ii, 799.

(*r*) First made in 1858, Report of Select Committee on Standing Orders Revision, 1857-8.

(*s*) Speaker's ruling, Parl. Deb. (1900) 78, c. 695. For Chairman's report, see C. J. (1935-36) 40 ; *ibid.* (1936-37) 66 ; *ibid.* (1937-38) 67. For report from Mr. Speaker's Counsel, see C. J. (1924) 36 ; *ibid.* (1924-25) 46.

on the people, by way of tax, rate, toll, or duty ought to be first brought into that House (see p. 764 *et seq.*). But, in accordance with a resolution of 1858, which has been made a standing order (S.O. 191 (H. C.)), the House of Commons does not now insist upon its privileges, "with regard to any clauses in private bills sent down from the House of Lords, which refer to tolls and charges for services performed, and are not in the nature of a tax, or which refer to local rates." This is applied to confirming bills (p. 979) by S.O. 219.

This resolution has been held to extend to turnpike, harbour, drainage, and other similar bills (*t*), but not to "hybrid" bills (*u*). It has been ruled not to extend to clauses in an improvement bill, which proposed to impose a tax upon all insurance companies having policies upon houses within the borough. On 8 May 1873, the Speaker called attention to clauses of this character in the Bradford Improvement Bill, which had been brought from the House of Lords; but "as the promoters were not responsible for the introduction of the bill into the other House, and had signified their intention to withdraw these clauses, he submitted to the House that this course would be sufficient under the circumstances to repair the irregularity." Upon this condition the bill was allowed to proceed (*a*).

This relaxation of the privileges of the Commons made it possible for many bills to be introduced into the Lords which would formerly have had to be brought first into the Commons; and Parliament was enabled to ensure a more equal distribution, between the two Houses, of the private business of the session. Under the division annually made by the two Chairmen and their Counsel, the private bills proposed to be introduced are now divided, therefore, as equally as possible between the two Houses with a view to general convenience. Competing bills should be introduced in one and the same House so as to be considered together; and where a bill has been rejected previously in one House, a subsequent bill with similar objects should be introduced in the same House. It is probable that certified bills will usually originate in the Lords (p. 958), since it has been the practice for bills relating to the subjects of certified bills to originate in that House.

## INTRODUCTION OF BILLS IN EXCEPTIONAL CASES

Under S.O. 2 (H. C.), no private bill is to be brought into the House otherwise than upon a petition duly deposited in accordance with the provisions of that standing order and of S.O. 38 (H. C.); but there are some cases in which a departure is made from the ordinary rules which govern the introduction of private bills.

In the case of the annual money bill promoted by the London County Council, the petition for the bill is permitted under S.O. 220 (H. C.) to be deposited, and the bill itself presented, at later dates than those prescribed in the case of private bills generally. "Hybrid" bills, which have already been described in Chapter XXX, and provisional order bills, which will be dealt with later (Chapter XXXV), are not required to be brought in, like private bills, upon petition. There have also

(*t*) Reading and Hatfield Road Bill, 1858; Wexford Harbour Commissioners Bill, 1861; Melton Mowbray Navigation Bill, 1877; Dearne Valley Water Bill, 1880.

(*u*) Lee River Conservancy Bill, 1868.

(*a*) C. J. (1873) 194; Parl. Deb. (1873) 215, c. 1676.

been instances of such urgent necessity for legislation that a private bill has been brought in on motion; in such cases the standing orders have been suspended by order of the House, and leave given to bring in the bill (*b*).

The London Passenger Transport Board (Finance) Bill, 1935, was subjected to a special procedure, in accordance with an order of the House (*c*).

#### PETITIONS FOR BILLS, AND BILLS DEPOSITED AFTER TIME

If parties who have not deposited a petition for the bill before 27 November desire to solicit a private bill during the current session, they may, under the provisions of S.O. 83, apply to the Chairman of Ways and Means, praying for leave to deposit a petition for a bill, and explaining the circumstances under which they have been prevented from complying with the orders of the House as to the deposit of the petition for the bill at the proper time. If such leave is given, the petition for the bill is deposited in the Committee and Private Bill Office, and the bill is proceeded with in the usual manner, but nothing in S.O. 83 exonerates the petitioners from the effect of their failure to comply with the standing orders governing the time for depositing petitions for bills. This means that the granting of leave to deposit a petition for a late bill is not to prejudice the case before the Examiner.

This procedure superseded in 1945 that which obtained between 1903 and 1945, whereby two petitions had to be lodged, (*a*) a petition, which had to be endorsed by the Chairman of Ways and Means, for leave to deposit a petition for the bill, and (*b*) the petition for the bill. Petition (*a*) was then referred to the Standing Orders Committee, who reported whether or no leave should be given to deposit the petition for the bill.

In some cases occurring before the repeal, in 1903, of the standing order under which the petitions for private bills were presented to the House and the bills themselves formally ordered to be brought in, promoters obtained leave from the House to withdraw their original petition for a bill and to present petitions for several separate bills with reference to the objects comprised in their original petition (*d*).

#### PETITION FOR ADDITIONAL PROVISION

If, after the introduction of a private bill, any additional provision should be desired to be made in the bill, in respect of matters to which the standing orders are applicable, a petition for that purpose, which under S.O. 73 (H. C.) must receive the indorsement of the Chairman of Ways and Means, is deposited in the Committee and Private Bill Office with a printed copy of the proposed clauses annexed.

Under the same standing order the petition, unless it relates to a

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(*b*) East London Railway (Payment of Debts) Bill, C. J. (1878) 320; Metropolitan Board of Works (District Railway) Bill, *ibid.* (1883) 242; Manchester Ship Canal Bill, *ibid.* (1887) 276; Hull, Barnsley, and West Riding Junction Railway and Dock (No. 2) Bill, *ibid.* (1889) 295; Lancashire Union Railway (Mines) Bill, *ibid.* (1894) 218.

(*c*) C. J. (1934-35) 252.

(*d*) South Eastern Railways, C. J. (1845) 43, 104, 115, 136; London and Croydon Railway (Kentish Lines) and London and Croydon Railway Enlargement and Orpington Branch Railway, *ibid.* (1845) 108, 130, 138. See also C. J. (1892) 46.

Certified Bill, is referred to the Examiners of petitions for private bills, who are required to give at least two clear days' notice of the day on which it will be examined.

Memorials complaining of non-compliance with the standing orders, in respect of the petition, may be deposited in the Committee and Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of the petition; and the Examiner may entertain any memorial, although the party (if any) who may be specially affected by the non-compliance shall not have signed it (S.Os. 75, 195 (H. C.)).

After hearing the parties, in the same manner as in the case of an original petition for a bill, the Examiner reports to the House whether the standing orders have been complied with or not, or whether any are applicable to the petition for additional provision; and if the Standing Orders Committee report that those standing orders with which the Examiner reports a non-compliance should be dispensed with, the promoters have leave, upon the resolution of that committee being agreed to by the House, to introduce their additional provision, if the committee on the bill think fit (*e*), or subject to any stated conditions (*f*). The Standing Orders Committee of the House in which the bill does not originate consider the Examiner's report at the same time.

Under S.O. 73 (H. C.) where provisions are sought to be inserted, upon petition for additional provision, which were comprised in the original notices but were not contained in the bill as introduced into Parliament, the original notices are not held to apply to the additional provisions proposed to be inserted.

In 1853 the Standing Orders Committee had reported that the parties should have leave to make provision in the Lands Improvement Company Bill, pursuant to their petition. In the meantime the amendments proposed to be made in other parts of the bill had become so numerous that the Chairman of Ways and Means required the promoters to withdraw it and bring in another bill. On bill No. 2 being ordered, the resolution of the House on the report of the Standing Orders Committee was read, and the members, by whom (in accordance with the then existing practice) the bill was ordered to be brought in, were instructed to make provision pursuant to the petition. A second reference to the Standing Orders Committee was thus avoided.

### WITHDRAWAL OF PETITIONS AND OF BILLS.

If the promoters decide not to proceed further with a petition for a bill, in a case where the Examiner has reported non-compliance with the standing orders, and the report has been referred to the Standing Orders Committee, an order is made by the House, discharging the reference to the Committee and withdrawing the petition for the bill (*g*). In other cases, the promoters inform the Committee and Private Bill Office of their intention not to proceed, and a notice to that effect appears in Private Business (*h*).

(*e*) C. J. (1904) 79, 85; *ibid.* (1937-38) 174.

(*f*) C. J. (1934-35) 173.

(*g*) C. J. (1929) 122.

(*h*) Private Business (1936-7) 64, 65.

In 1905, in the Coventry Electric Tramways case, the promoters informed the Standing Orders Committee that they did not intend to proceed with their bill, and the Committee reported the fact to the House (*i*).

When a bill has been presented and read the first time, and any order as to its further stages has been made, if the promoters do not wish to proceed, an order is made by the House, withdrawing the bill (*k*). In the case of a bill originating in the Lords, no order is now made by the House for its withdrawal (see p. 947), but the order for the second reading or other stage is discharged and a notice appears in Private Business that the bill will not be further proceeded with (*l*).

### PARLIAMENTARY AGENTS

The persons by whom the promotion of private bills, and the conduct of proceedings upon petitions against such bills, are actually carried out, are parliamentary agents.

#### RULES RELATING TO PARLIAMENTARY AGENTS

Upon all parliamentary agents various duties and responsibilities are imposed by the orders of both Houses ; and in both Houses rules have been laid down to be observed by the officers of the House, and " by all parliamentary agents and solicitors engaged in prosecuting proceedings in the House upon any petition or bill."

These rules were originally laid down by the Speaker, by authority of the Commons in 1837 (*m*), and have been revised at intervals. In April 1938, a new set of rules, which slightly modified the previous system, was approved and issued by the Chairman of Committees in the Lords and the Speaker in the Commons. These rules are set out below in the form in which they have been issued in the Commons.

1. There shall be kept at the Committee and Private Bill Office a register of the persons entitled to practise as Parliamentary Agents distinguishing those entitled so to practise both in promoting and opposing Bills and those entitled so to practise in opposing Bills only.

2. No person shall be entitled to practise as a Parliamentary Agent unless he is so registered :

Provided that a person so registered, if a member of a firm, may carry on his business as Parliamentary Agent under the name and style of the firm notwithstanding that one or more other members of the firm are not so registered, but partnership with a person who is so registered shall not entitle any partner not so registered to practise as a Parliamentary Agent.

3. No person shall be registered until he has subscribed before one of the Clerks in the Committee and Private Bill Office a declaration in such form as the Speaker may prescribe engaging to obey and observe the Orders and practice of the House of Commons and any Rules prescribed by the Speaker, and also to pay and discharge from time to time when demanded all fees and charges due from the Promoters or as the case may be the Opponents for whom he shall act.

(*i*) C. J. (1905) 38.

(*k*) C. J. (1929-30) 182, 184 ; *ibid.* (1936-7) 193.

(*l*) Barmouth Urban District Council Bill [Lords], C. J. (1938-9) 327, Private Business (*ibid.*) 361.

(*m*) C. J. (1836) 819, *ibid.* (1837) 113.

4. Any person either before or after his name has been entered in the register shall, if required by the Speaker, enter into a recognisance or bond in a penal sum not exceeding £500, with two sureties each for half the penal sum, to observe the said declaration.

5. In the case of a firm, it shall suffice if one member of the firm subscribes the required declaration and enters into the required recognisance or bond on behalf of the firm.

6. No fee shall be payable in respect of the said declaration, recognisance, bond or registration.

7. No applicant shall be qualified to be registered as a Parliamentary Agent entitled to practise both in promoting and opposing Bills unless he satisfies the Speaker that he has practical knowledge of the Standing Orders and procedure of the House of Commons regulating Private Business :

Provided that any person shall be entitled to be registered if before or within six months after the date when these rules come into operation he makes an application for the purpose, and proves that within the five preceding years he either

(i) *bona fide* practised as a Parliamentary Agent and in that capacity conducted the promotion of two or more Bills which have passed into law or of two or more Provisional Orders under the Private Legislation Procedure (Scotland) Act, 1899, or the Private Legislation Procedure (Scotland) Act, 1936, which have been confirmed by Parliament ; or

(ii) being a member of a firm which *bona fide* practised as Parliamentary Agents, was concerned in the conduct of two or more such Bills as aforesaid or two or more such Provisional Orders as aforesaid.

8. The Speaker may, if he thinks fit, appoint an Advisory Committee and refer to that Committee for advice any question arising as to the qualifications of any applicant for registration.

9. No person shall be qualified to be registered as a Parliamentary Agent entitled to practise as such in opposing Bills only, unless he is actually employed in opposing a Bill or Special Order, and the registration shall cease to have effect on the close of the session in which it was effected.

10. Any person possessing the required qualifications shall be entitled to be registered unless the Speaker otherwise directs :

Provided that unless he is a solicitor or has been registered as a Parliamentary Agent before the date when these Rules come into operation he must on his first application for registration produce to one of the Clerks of the Committee and Private Bill Office a certificate of his respectability from a Member of Parliament, a Justice of the Peace, a Barrister, or a Solicitor.

11. Every application for registration must be in writing.

12. No person's name shall be printed on any Private Bill, as Parliamentary Agent for such Bill, unless and until his name has been duly inscribed upon the Register of Parliamentary Agents.

13. No Notice shall be received in the Committee and Private Bill Office for any proceeding upon a Petition or Bill, until an Appearance to act as the Parliamentary Agent upon the same shall have been entered in the Committee and Private Bill Office ; in which Appearance shall also be specified the name of the Solicitor (if any) for such Petition or Bill.

14. Before any person desiring to appear by a Parliamentary Agent shall be allowed to appear or be heard upon any Petition against a Bill, an Appearance to act as the Parliamentary Agent upon the same shall be entered in the Committee and Private Bill Office ; in which Appearance shall also be specified the name of the Solicitor and of the Counsel who appear in support of any such Petition (if any Counsel or Solicitor are then engaged), and a

Certificate of such Appearance shall be delivered to the Parliamentary Agent, to be produced to the Committee Clerk.

15. Except in cases where a Bill is promoted or a Petition is presented by two or more companies bodies or persons separately interested, one Parliamentary Agent or firm of Agents only shall be allowed to appear and to be heard in the proceedings on the Bill on behalf of the Promoters or the Petitioners.

16. In case the Parliamentary Agent for any Petition or Bill shall be displaced by the Solicitor thereof, or such Parliamentary Agent shall decline to act, the responsibility of such Agent shall cease in respect of any Fees incurred after that time upon a Notice being given in the Committee and Private Bill Office, and a fresh Appearance shall be entered upon such Petition or Bill.

17. No written or printed statement relating to any Private Bill shall be circulated within the precincts of the House of Commons without the name of a Parliamentary Agent attached to it, who will be held responsible for its accuracy.

18. The sanction of the Chairman of Ways and Means is required to every Notice of a Motion prepared by a Parliamentary Agent, for dispensing with any Sessional or Standing Order of the House.

19. A Parliamentary Agent shall not divide with or pay to any client, or any solicitor, clerk, officer, or servant of any client, any moneys which the Agent at any time receives in respect of his costs charges and expenses in promoting, opposing or otherwise dealing with any Bill or Provisional Order, or give any commission or gratuity to any person in respect of his employment as a Parliamentary Agent.

20. Every Parliamentary Agent and Solicitor conducting Proceedings in Parliament before the House of Commons shall be personally responsible to the House, and to the Speaker, for the observance of the Rules, Orders, and Practice of Parliament, as well as of any Rules which may from time to time be prescribed by the Speaker, and also for the payment of the Fees and Charges due and payable under the Standing Orders.

21. Any person registered as a Parliamentary Agent who shall act in violation of the Orders and practice of the House of Commons or who shall be guilty of professional misconduct of any kind as a Parliamentary Agent shall be liable to an absolute or temporary prohibition to practise as a Parliamentary Agent at the discretion of the Speaker.

22. No person who has been suspended or prohibited from practising as a Parliamentary Agent or who otherwise than at his own request has been struck off the Roll of Solicitors or disbarred by any of the Inns of Court shall be allowed to be entered or retained on the register without the express authority of the Speaker.

23. For the purposes of these Rules—

“ Bill ” shall mean—

(a) any Private Bill ;

(b) any Public Bill with respect to which the Examiners have reported that Standing Orders relative to Private Bills are applicable ;

(c) any Bill so far as it relates to the confirmation of a Provisional Order opposed on petition ;

and except as respects the proviso to Rule 7 includes a Special Order opposed on petition.

“ Solicitor ” includes a solicitor in England, Scotland or Northern Ireland and a Writer to the Signet.

24. These Rules shall come into operation at the close of the present Session of Parliament.

Provided that an application under Rule 7 may be made at any time before that date.

#### REGISTRY OF AGENTS (S.O. 192 (H. C.))

The name and place of business of the parliamentary agent in London, soliciting a bill, are entered in the registers in the Committee and Private Bill Office, which are open to public inspection.

#### MEMBERS AND OFFICERS OF THE HOUSE DISQUALIFIED AS AGENTS

Besides these regulations, there are certain disqualifications for parliamentary agency. Members may not be agents; and, in compliance with a recommendation of a select committee of the House of Commons in 1835, no officer or clerk belonging to the establishment is allowed to transact private business before the House, for his emolument or advantage, either directly or indirectly (*n*).

#### FEES PAYABLE ON PRIVATE BILLS (*o*)

The fees which are chargeable in either House upon the various stages of private bills, and are payable by the several parties promoting or opposing such bills, are referred to in S.O. 202 (H. L.) and S.O. 237 (H. C.) and are specified in Appendix (C) to the standing orders of each House.

It is declared by the Commons, "That every bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private bill, within the meaning of the table of fees"; and that "the fees shall be charged, paid and received at such times, in such manner, and under such regulations as the Speaker shall from time to time direct" (*p*).

In the Commons, only half of the fees for proceedings in the House are charged on bills certified under S.O. 3.

#### HYBRID BILLS

Fees are also chargeable on "hybrid bills," though in some special cases, where the objects of the bill were mostly of a public nature, they have been remitted; and petitioners against hybrid bills are charged with fees.

#### COLLECTION OF FEES

In both Houses there are officers whose special duty it is to take care that the fees are properly paid by the persons responsible; and the

(*n*) H. C. 648, p. 9 (1833); H. C. 606, pp. 17, 19 (1835). Cf. also C. J. (1830) 107; Clifford ii. 878; and Report, etc., of Joint Committee on Parliamentary Agency, H. C. 360 (1876).

(*o*) For fees payable on Provisional Order Bills see p. 984.

(*p*) See Private Business Standing Orders, Appendix (C). Fees were remitted in both Houses without any petition in the case of the Red Cross and Order of St. John Bill [Lords] in 1918. In 1604, counsel was assigned to a party, in a private bill, *in forma pauperis*, he "being a very poor man," C. J. (1547-1628) 241.



Speaker has power to prohibit, either absolutely or temporarily, an agent, who defaults in the payment of the fees of the House, from practising in that capacity (see Rules 20 and 21 above).

#### APPLICATION

All moneys arising from the fees are treated as an appropriation in aid of the vote for the offices of the respective Houses, and the amounts shown on the estimates.

#### TAXATION OF COSTS

In connection with the passing of private bills mention must also be made of the taxation of the costs incurred by the promoters, opponents, and other parties. Before 1825 no provision had been made by either House, as in other courts, for the taxation of costs incurred by suitors in Parliament. In 1825, an Act was passed to establish such a taxation in the Commons (*q*); and in 1827, another Act was passed to effect the same object in the Lords (*r*). Both these Acts, however, were very defective, and have since been repealed. By the present statutes (*s*) regulating the taxation of costs in each House a regular system of taxation has been established.

#### TAXING OFFICERS

In each House there is a taxing officer, having all the necessary powers of examining the parties and witnesses on oath, and of calling for the production of books or writings in the hands of either party to the taxation.

#### LIST OF CHARGES

Lists of charges have been prepared, in pursuance of these Acts, in both Houses, defining the maximum charges which parliamentary agents, solicitors and others will be allowed to charge for the various services usually rendered by them. These lists are printed for distribution to all persons who may apply for them.

#### APPLICATIONS FOR TAXATION

Any person upon whom a demand is made by a parliamentary agent or solicitor, for any costs incurred in respect of any proceedings in the House, or in complying with its standing orders, may apply to the taxing officer for the taxation of such costs. Any parliamentary agent or solicitor who may be aggrieved by the non-payment of his costs may apply, in the same manner, to have his costs taxed, preparatory to the enforcement of his claim. The client, however, is required by the act to make this application within six months after the delivery of the bill. But the Speaker in the Commons, or the Clerk of the

(*q*) 6 Geo. 4, c. 123.

(*r*) 7 & 8 Geo. 4, 64.

(*s*) House of Commons Costs Taxation Act, 1847, and House of Lords Costs Taxation Act, 1849, as amended by the Parliamentary Costs Act, 1865, and the House of Commons Costs Taxation Act, 1879 and s. 17 of the Perjury Act, 1911.

Parliaments in the Lords, on receiving a report of special circumstances from the taxing officer, may direct costs to be taxed after the expiration of six months.

#### COSTS OF BOTH HOUSES TAXED TOGETHER

The taxing officer of either House is enabled to tax the whole of a bill brought before him for taxation, whether the costs relate to the proceedings of that House only, or to the proceedings of both Houses ; and also other general costs incurred in reference to the private bill or petition. And each taxing officer may request the other, or the proper officer of any other court, to assist him in taxing any portion of a bill of costs. The proper officers of other courts may, in the same manner, request the assistance of the taxing officer of either House in the taxation of parliamentary costs ; such costs when taxed and settled are returned by the taxing officer, with his opinion thereon, to the officer who made the request (t).

#### CERTIFICATE TO HAVE THE EFFECT OF A WARRANT TO CONFESS JUDGMENT

In the case of costs not taxed at the request of the taxing officer of another court, the taxing officer, if requested so to do by the parties, reports his taxation in the Commons to the Speaker, and, in the Lords, to the Clerk of the Parliaments. If no objection be made within twenty-one days after such report, either party may obtain from the Speaker or from the Clerk of the Parliaments, as the case may be, a certificate of costs allowed, which in any action brought for the recovery of the amount so certified, will have the effect of a warrant of attorney to confess judgment, unless the defendant shall have pleaded that he is not liable to the payment of the costs.

#### POWER OF TAXING OFFICER EXTENDED

By the House of Commons Costs Taxation Act, 1879, the powers of the taxing officer were extended to costs in respect of provisional orders and certificates, and bills promoted by public authorities, and oppositions to public bills. He is also required to tax costs incurred in respect of any bill or provisional order or certificate, if requested to do so by a Secretary of State, or by the Ministry of Health.

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(t) House of Lords Costs Taxation Act, 1849, s. 12.

## CHAPTER XXXII

# PETITIONS IN FAVOUR OF, AGAINST, OR RELATING TO PRIVATE BILLS IN THE HOUSE OF COMMONS. LOCUS STANDI OF PETITIONERS AND THE REFEREES ON PRIVATE BILLS

### PRESENTATION AND WITHDRAWAL OF PETITIONS (S.Os. 171-173, 219)

All petitions in favour of or against or otherwise relating to private bills or bills to confirm provisional orders or certificates are presented to the House, not in the usual way of presenting petitions, but by depositing them in the Committee and Private Bill Office, where they may be deposited by a Member, party, or agent. Under S.O. 172 all petitions, except those in favour, must be printed or typewritten by the Agent concerned for the petition, and copies must be supplied, on payment to any interested parties who apply therefor; and a copy of a petition praying to be heard against a private bill must be supplied to the Agent for the bill not later than the day following the deposit of the petition. Any petitioner may withdraw his petition, or his opposition, on a requisition to that effect being deposited in the Committee and Private Bill Office, signed by himself or by the agent who deposited the petition (*a*).

### PETITIONS IN FAVOUR OF PRIVATE BILLS

Petitions in favour of private bills are not referred to the committee as the petitioners are not parties to the bill. On one side are the promoters, and on the other petitioners against the bill. Petitioners in favour of the bill can claim no hearing before the committee, except as witnesses called by the promoters; Counsel may allude to the presentation of such petitions in argument, but may not examine witnesses in respect of their contents or signatures (*b*).

### PETITIONS AGAINST PRIVATE BILLS

PETITIONS TO BE DEPOSITED BEFORE A PRESCRIBED TIME (S.Os. 129, 217)

Petitions against a private bill originating in the House of Commons must be deposited on or before 30 January, and petitions against a

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(*a*) Cf. the proceedings on the Thames Conservancy Bill, C. J. (1894) 121; on the Thames Tunnel, etc., Bill (Group 2), 12 and 13 June 1860; and on the South Yorkshire, etc., Railway Bill (Group 8), 27 June and 1 July 1890.

(*b*) Minutes of committee on Group 2 of Railway Bills, 1861 (17 April).

bill to confirm a provisional order (originating in the Commons) must be deposited not later than seven clear days after notice has been given of the day on which the bill will be examined. In the case of the following classes of bills, viz :—

- (a) Bills including bills to confirm provisional orders, brought from the House of Lords;
- (b) Bills which the promoters have been permitted to deposit after the prescribed time;
- (c) Bills promoted by the London County Council and introduced under S.O. 220;
- (d) Bills in respect of which the Examiner has endorsed the petition, "Standing Orders not complied with," or in respect of which he has made a special report, or in respect of which the examination has been adjourned to a day after 20 January;

a petition against the bill may be deposited at any time not later than ten clear days after the first reading.

When 30 January falls on a Sunday, the petitions required to be deposited on or before that day have to be deposited on or before Saturday, 29 January. In the other cases the deposit may be made on the Monday, if the last day in the period prescribed for depositing a petition falls on a Sunday (c); but if the period in question expires during an adjournment of the House other than an adjournment from Friday till Monday, the time is extended under Standing Order 189, to the first day on which the House sits after the adjournment.

A petition against alterations or a petition against an additional provision may be deposited at any time before the committee have reported the bill to the House.

#### PETITIONS TO STAND REFERRED TO COMMITTEE ON THE BILL AND HEARING OF PARTIES (S.Os. 126, 127, 219)

Under S.O. 126 every petition against a private bill (or bill to confirm a provisional order) or in which the petitioners complain of any matter which may have arisen during the progress of the bill before the committee or of the amendments as proposed in the filled-up bill which has been deposited within the time thus prescribed or has been otherwise deposited in accordance with the standing orders, and in which the petitioners pray to be heard by themselves, their counsel, or agents, stands referred to the committee on the bill, without any distinct reference from the House (d).

When part of a petition had been omitted by mistake, and afterwards added, it was ruled that such part was not referred to the committee (e).

Under S.O. 127 the promoters of an opposed private bill are entitled to be heard by themselves, their counsel, or agents in favour of the bill and against any petitions against the bill, and to tender evidence; similarly petitioners against the bill, subject to the rules and orders of the House, and to the prayer of their petition, are entitled to be heard upon their

(c) Cf. 2 C. & S. 4.

(d) As to petitions against bills "substituted" for orders under the Private Legislation Procedure (Scotland) Act, 1936, see Chapter XXXVI.

(e) Parl. Deb. (1846) 83, c. 487.

petition by themselves, their counsel, or agents, and to tender evidence. Also, by this order the minutes of evidence taken before a committee on an opposed bill are to be printed at the expense of the parties, in accordance with directions by the Speaker. This last provision was an Order of the House of 1864 (*f*) and was incorporated in the Standing Orders in 1945.

#### RULES AS TO HEARING PETITIONERS AGAINST BILLS (S.O. 129)

No petitioners against a private bill (or provisional order confirmation bill) will be heard before the committee unless their petition has been prepared and signed in strict conformity with the rules and orders of the House, and has been deposited within the time limited—except where the petitioners complain of any matter which may have arisen in committee, or of the amendments as proposed in the filled-up bill (*g*) (see also p. 932).

Petitions against alterations or against petitions for additional provisions are not infrequently presented by parties who object to alterations, proposed to be made in the bill in committee, which might affect them. Where, however, these alterations are proposed only by petitioners against the bill, the promoters are held to be fully competent to defend their bill without the intervention of the petitioners against alterations; and in such cases it is not usual for the committee also to hear the petitioners against alterations unless the committee or promoters should be disposed to accept the alterations so proposed.

#### PETITIONS DEPOSITED AFTER TIME

If a petition be presented after the time limited, the only mode by which the petitioners can obtain a hearing is by depositing a petition, praying that the standing orders be dispensed with in their case, and that they may be heard by the committee. The petition will stand referred to the Standing Orders Committee; and if the petitioners are able to show any special circumstances which entitle them to indulgence and, particularly, that they have not been guilty of laches, the standing orders will be dispensed with (*h*).

In the case of unopposed bills, which the Chairman of Ways and Means has ordered to be treated as opposed (see p. 919), the House has ordered that petitions against the bill presented within a specified period should be referred to the committee on the bill (*i*).

In 1905 the Standing Orders Committee having reported, in the case of a petitioner against the Great Northern (Ireland), etc., Railways Bill, that S.O. 128 (now 129) ought not to be dispensed with, the House ordered that the committee's resolution be referred back to them, to consider whether

(*f*) C. J. (1864) 71.

(*g*) This includes petitions for additional provisions.

(*h*) Standing Orders Committee report, That S.O. 128 (now 129) ought to be dispensed with, C. J. (1904) 48; *ibid.* (1932-33) 69; ought not to be dispensed with, *ibid.* (1904) 235; *ibid.* (1933-34) 93.

(*i*) C. J. (1901) 240; *ibid.* (1911) 81. See also C. J. (1907) 422, for an instruction to a committee to which an unopposed bill had been recommitted to hear witnesses.

under the circumstances of the case the standing order should not be dispensed with; but the committee again resolved that it should not (*k*).

#### DEATH OF PETITIONERS

Where petitioners have died after the deposit of their petitions, their sons, or their agents or executors, have petitioned to be heard, and, on the report of the Standing Orders Committee, have been permitted to appear and be heard upon the petitions of the deceased petitioners (*l*), or to deposit a new petition after the time limited (*m*).

#### GROUND OF OBJECTION TO BE SPECIFIED (S.O. 128)

No petition will be considered which does not distinctly specify the grounds on which the petitioners object to any of the provisions of the bill. The petitioners can only be heard on the grounds so stated. If not specified with sufficient accuracy, the committee may direct a more specific statement to be given, in writing, but limited to the grounds of objection which had been inaccurately specified; but this power has been seldom exercised (*n*).

#### LOCUS STANDI OF PETITIONERS AGAINST PRIVATE BILLS

Such being the general rules relating to petitions, it is now necessary to describe the mode of adjudicating upon formal objections, on the part of promoters, to petitions against a private bill, and upon the petitioner's rights to be heard before the committee appointed to deal with the bill. Prior to 1864, any such question was heard and determined in both Houses—as it is still in the Lords—by the committee on the bill. Considerable objection was raised to this practice on the ground of its inconvenience and expense, counsel and witnesses having often been kept in attendance on behalf of petitioners who were adjudged, at the eleventh hour, to have no claim to be heard. With a view to obviate these objections, and at the same time to introduce greater uniformity and certainty into the decisions upon these important points, the adjudication of questions of *locus standi* was entrusted by the Commons in 1865 to the

(*k*) C. J. (1905) 61, 117, 128.

(*l*) Petition of F. L. Hopkins against the Lincolnshire Estuary Bill, C. J. (1851) 226, 233. See also the proceedings in the committee on the Great Western Railway (Steam Vessels) Bill, 29 June 1909 (Group 5 of Railway Bills), as to the circumstances and conditions under which certain persons who were parties to, and had contributed to the cost of, a petition against the bill, although they were not signatories thereof, were allowed to be heard upon the petition, when the persons who had signed it did not enter an appearance upon it.

(*m*) Petition of the Duke of Portland against the Ardrossan and Glasgow Railway Bill (C. J. (1854) 206, and Suppl. to Votes, 1854, p. 606). Petition of C. Morrison against the Metropolitan Inner Circle, etc., Railway Bill (C. J. (1878) 112, and Private Business, (1878), p. 188), etc.

(*n*) Cf., upon this point, the recommendation of the Select Committee on Private Business (H. C. 378, p. ix (1902)).

"Referees of the House on Private Bills," who had been constituted by a standing order passed in the preceding year (*o*).

## COURT OF REFEREES ON PRIVATE BILLS

### CONSTITUTION AND DUTIES

As at present constituted under S.O. 89 the Court of Referees consist of the Chairman of Ways and Means, the Deputy Chairman, and the Counsel to Mr. Speaker, with not less than seven other members of the House, who are appointed by the Speaker for such periods as he thinks fit. Three Referees are sufficient to constitute each court; and their duty, as defined by S.O. 91, is to decide:

"Upon all petitions against private bills, as to the rights of the petitioners to be heard upon such petitions, without prejudice, however, to the power of the committee to which the bill is referred to decide upon any question as to such rights arising incidentally in the course of their proceedings" (*p*).

This standing order is made applicable to petitions against bills to confirm provisional orders by S.O. 215.

### RULES OF PROCEDURE

Under S.O. 90,

"The practice and procedure of the Court, their times of sitting, order of business, and the forms and notices required in their proceedings, shall be prescribed by rules, to be framed by the Chairman of Ways and Means, subject to alteration by him as occasion may require, but not more than one counsel shall appear before the Court in support of a private bill, or in support of any petition in opposition thereto, unless specially authorized by the Court."

The standing order further states that these rules and alterations are to be laid on the table of the House. By S.O. 215, the proceedings of the Court in the case of a bill for confirming a provisional order or certificate are to be conducted in like manner as in the case of a private bill, and are subject to the same rules and orders of the House, so far as they are applicable.

It has been held that parties petitioning against a bill for confirming a provisional order were not debarred from appearing before the committee by the fact of their having originally signed a memorial asking the promoting parties to apply for a provisional order (*q*).

### NOTICE BY PROMOTERS OF INTENTION TO OBJECT

By one of the rules made by the Chairman of Ways and Means (*r*) under this standing order, the promoters of a bill who intend to object

(*o*) See also H. C. 108 (1876); C. J. (1876) 101, 120; H. C. 378, App. 9 (1902); Clifford ii, 804-13, for other information as to the Referees.

(*p*) For example, the *locus standi* of petitioners against an additional provision. See Minutes of Proceedings on the Sunderland Corporation Bill, 1934-35 (Group H). Cf. also the petition of Coventry Corporation "against alterations" in the London, Midland and Scottish Railway Bill, 1934-35 (Minutes of Proceedings, Group B).

(*q*) 1 C. & R. 119. As to *locus standi* of petitioners alleging a provisional order to be *ultra vires*, see 1 B. 73.

(*r*) The present rules are dated 20 March, 1945.

to the right of petitioners to be heard against it, are to give notice of such intention, and of the grounds of their objection, to the clerk to the Court and to the agents for the petitioners, not later than the eighth day after the day on which the petition was actually deposited in the Committee and Private Bill Office (s); but the Court may permit such notices to be given, under special circumstances after the prescribed time has expired (t). Such notices may also be withdrawn by notice in writing given at the office of the Court, and a copy thereof must be served upon the agents for the petitioner on the same day.

#### MANNER OF HEARING LOCUS STANDI CASES

On the day appointed for hearing any case before the Court of Referees, it has to be proved that the notices of objections have been duly served. If no one appears in support of the petition, the *locus standi* of the petitioners is disallowed (u). If the petitioners appear—their petition against the preamble or clauses of the bill, the statement of objections to their right to be heard, and the bill itself, being before the court—the counsel or agent for the petitioners supports their claim; and the counsel or agent for the promoters is heard in reply—the speeches being thus limited to one on each side. For the purposes of argument on questions of *locus standi*, the allegations of a petition are ordinarily admitted: but where the rights of petitioners to be heard depend upon special facts which are disputed, they may be called upon to give *prima facie* evidence in support of their case (a).

If the petitioners have called evidence in support of their *prima facie* case, the promoters are not permitted to call rebutting evidence (b).

#### LOCUS STANDI LIMITED TO POINTS ALLEGED IN PETITION

Some petitioners pray to be heard against the preamble and clauses of the bill, some against certain clauses only; and others pray for the insertion of protective clauses, or for compensation for damage which will arise under the bill. The *locus standi* of a petitioner is always limited to the points alleged in his petition. It is often still further limited by a decision of the court disallowing him a *locus standi* except against some, only, of those provisions to which he objects in the bill. In giving its decision in such cases the court limits the petitioner's *locus standi*, not to certain portions of his petition, but to certain portions of the bill (c). When the parties have come to an agreement before the court, the *locus standi* of the petitioners is usually disallowed except to the extent to which the agreement goes (d), or a limited *locus standi* is allowed (e), but in

(s) The time allowed for serving such notices of objection is exclusive of the day on which the petition was deposited, S. 6, App. 97; 2 C. & S. 2. It has been ruled that the service of such notices by post is not sufficient, but under certain circumstances it has been allowed, S. 7 App. 98; 3 C. & R. 376.

(t) Permission granted, R. & M. 174; not granted, R. & S. 11, 159.

(u) S. 8, App. 91.

(a) S. 11, 12, App. 93; 1 C. & S., App. 41; 3 C. & R. 155, 316, 319; 1 S. & A. 294.

(b) 1 S. & A. 197-98.

(c) Cf. 2 C. & R. 130; 2 S. & A. 191; 1 B. 70.

(d) 2 S. & B. 11.

(e) *Ibid.* 70.



some cases no order is made (f). In other cases the Court in allowing a general or "unlimited" *locus standi* against a bill, have left the relevancy of some of a petitioner's allegations for the determination of the committee (g).

#### PRACTICE OF THE COURT REGARDING LOCUS STANDI CASES

Upon the commencement of their jurisdiction in 1865, the Court of Referees took as the basis of their practice the principles and precedents contained in the decisions, regarding the *locus standi* of petitioners, that had previously been given by individual committees; and they reduced to a system, as far as possible, the rules affecting the rights of petitioners to be heard. In the course of time this system has been modified, not only by the interpretations and decisions of the court itself, but by the additions and alterations that have been made in the standing orders relating to *locus standi*. Generally speaking, it may be said that petitioners are not entitled to a *locus standi* unless it is proved that their property or interests are directly and specially affected by the bill, whether a private bill or a bill to confirm a provisional order or certificate other than a provisional order under the Private Legislation Procedure (Scotland) Act 1936 (h). But so many exceptional circumstances naturally arise in each instance that, in the following pages, nothing beyond a brief review can be given of the more important classes of cases determined by the court. For more detailed information, the reader must consult the invaluable series of "*Locus Standi Reports*," to which frequent references are here given, and especially the introductory chapters prefixed to 1 and 2 Clifford and Stephens' Reports (i).

#### LANDOWNERS' LOCUS STANDI

It has been laid down, as an established practice, that the owners of land proposed to be compulsorily taken—and also the lessees and occupiers on whom, as on owners, the notices required by the standing orders of both Houses are to be served—should always be heard against both the preamble and the clauses of a bill (k).

It has been ruled that a petitioner whose petition alleges that his land is taken and who prays to be heard against the preamble and clauses of the bill may be heard against the bill generally, even though his petition does not allege that he will be injured, or that the railway proposed by a bill is

(f) *Ibid.* 18, 54.

(g) 1 C. & R. 47; 2 *ibid.* 130. And cf. R. & S. 117-20, 330; 2 S. & A. 182.

(h) See S.O. 215 which applies to bills confirming provisional orders and certificates the practice and procedure of the House as to the determination of questions of the *locus standi* of petitioners against private bills and specifically applies thereto the relevant standing orders. What follows in this chapter respecting *locus standi* can therefore be taken as applying to such confirming bills equally as to private bills. In the case of provisional orders under the Private Legislation Procedure (Scotland) Act 1936 questions of *locus standi* are decided by the Commissioners holding the inquiry under that Act (see s. 6 (2)).

(i) For reports of cases of *locus standi* decided by the Court of Referees in 1865 (the first year of its jurisdiction) and in 1866, cf. S. For the years covered by subsequent reports of cases, see the Table of Abbreviations under C. & S., C. & R., R. & M., R. & S., S. & A., S. & B., and B.

(k) London and North Western Railway Bill, 1868, 1 C. & S., App. 62, 63 (known as the "post" case); 3 C. & R. 481.

unnecessary, and though it contains no reference to the preamble except in the prayer of the petition (*l*).

The same unlimited ("landowner's") *locus standi* has also been granted to the owner of minerals (*m*), and to the lord of a manor (*n*), claiming to be heard against bills affecting their property or rights; to magistrates and councillors having an interest in the lands or a right to gravel on the foreshore, within their burgh or barony (*o*); and to other petitioners who have been held to "have an interest" in land proposed to be taken.

In all such cases the Court of Referees determine—according to the circumstances which necessarily vary in each instance—whether petitioners have such an interest in land as to entitle them to a landowner's *locus standi*; or to what extent and with what restrictions they may claim a hearing (*p*).

Even in the case of an omnibus bill, that is to say, a bill in which the promoters seek powers for a number of various objects or different undertakings, whether promoted by a public authority or a railway or other company, the general *locus standi* allowed to a petitioner as a landowner has enabled him, however little of his land is taken, to be heard against the whole bill; and in cases where the promoters have desired more particularly to exclude him from being heard on any save certain provisions of a bill, the Court have refused so to limit his *locus standi* (*q*).

A landowner has been granted a general *locus standi* against an omnibus railway bill, however limited his interest (*r*); and a landowner, whose land was to be taken has been held to have a general *locus standi* against a general improvement bill (*s*).

In 1891, however, and again in 1903, when granting the usual "landowner's *locus standi*," against the whole of a railway (various powers) bill,

(*l*) Cf. Resolution of General Committee on Railway and Canal Bills, 1861, 1 C. & R. 207; 3 *ibid.* 301, 457.

(*m*) 1 C. & R. 221; 3 *ibid.* 46.

(*n*) S., App. 95; 1 C. & S. 39; 2 *ibid.* 89; 2 C. & R. 109, 212.

(*o*) 1 S. & A. 15.

(*p*) 1 C. & R. 158 (Owners of pavement in front of house in Glasgow); R. & S. 328-30 (Commoners where railway line proposed across common lands); R. & M. 313 (Owners of property not taken, but injuriously affected, by proposed railway); 1 S. & B. 67, 104-105 (Telephone company owning wires carried on brackets or posts); 2 S. & A. 184 (Owner of bed and foreshore of river though right of user vested in river Commissioners); 1 S. & B. 29 (Owners of ferry proposed to be acquired compulsorily by local authority); 1 S. & B. 121 (Coal owners entitled under agreement to rights in respect of a water way); S. App. 120; 2 C. & R. 34 (Mineral owners objecting to provisions relating to tolls); 1 C. & R. 215-6; 3 *ibid.* 55 (Owners and occupiers of land in reasonable proximity to canal proposed to be stopped up); S. 17; 1 C. & R. 270 (Owner of equitable interest where legal estate vested in trustees); 2 C. & R. 193; 3 *ibid.* 156; R. & S. 45 (Owners of land affected by underpinning though land outside limits of deviation); 2 S. & A. 55 (Promoters of bill to complete purchase of land treated as owners thereof) see however 2 S. & A. 144; R. & S. 320 (Owners of colliery against authorization of enlargement of reservoir alleged to endanger life and property in colliery); 1 S. & A. 116; 2 *ibid.* 16, 117 (Owners of land in proximity to site of proposed sewage works but outside limits entitling them to notice under S.O. 17).

(*q*) 2 C. & R. 130; 2 S. & A. 15, 123, 182, 230; and cf. 2 *ibid.* 73-75; 1 S. & B. 127.  
(*r*) London and North Western Railway Bill, 1868, 1 C. & S., App. 62, 63 (the "post" case); 2 C. & S. 37; R. & S. 117, etc (petitions of railway companies as landowners); 1 C. & R. 221; 2 *ibid.* 130; R. & S. 67; 2 S. & A. 182-83, etc. (petitions of other landowners); and cf. Select Committee on Private Bill Legislation, H. C. 385, pp. 105, 113 (1863).

(*s*) 1 C. & S. 19, App. 49; 1 C. & R. 158; 2 *ibid.* 69-70, etc.

to a petitioner whose land was taken under a part only of the bill, the court expressly declared that, in doing so, they did not intend to influence the committee, who would deal with the petitioner's interest as affected by the bill, in judging what might or might not be considered as material (*t*). In 1902, the *locus standi* of a petitioning landowner, a railway company, against an improvement (*omnibus*) bill promoted by an urban district council, was limited to those parts of the bill under which the company's land was taken or their interests affected (*u*).

In the case of a bill for the abandonment of a railway not completed within the time for which compulsory powers had been granted, the owner of land upon the route has not been allowed a *locus standi* (*a*), except in some cases where it has been shown that he has sustained special damage (*b*). Lessees of minerals beneath a line proposed to be abandoned have been refused a *locus standi* (*c*).

In the case of a bill for an extension of time, the owners of land authorized by a former Act to be taken, and already contracted for with the company, have been refused a hearing, on the ground that they were merely creditors (*d*).

In the case of a bill providing, not for an extension of time, but for a revival of the expired powers of a company, a *locus standi* has been allowed to another railway company (*e*) or a landowner (*f*) as if the bill were the original bill; but it has been refused in a similar case when, the money for the purchase of his property under the original Act having been paid into court, the petitioner's legal interest in it had passed into the hands of the promoters (*g*). On the other hand the owners of land which was proposed to be taken by a bill but which was subject to compulsory powers of purchase, though not actually taken, by another company, have been held to have a *locus standi*, as not being yet divested of their rights as owners (*h*).

#### LOCUS STANDI OF BODIES REPRESENTING TRADES, ETC., AND OF ASSOCIATIONS

The *locus standi* of bodies representing trades, businesses and interests in a locality is dealt with by S.O. 95, which confers on the Court of Referees a discretion of granting a *locus standi* to such bodies if they

(*t*) R. & S. 117 (railway company petitioning against an *omnibus* railway bill); 2 S. & A. 182 (London County Council, as landowner, against Metropolitan District Railway (Various Powers) Bill); and cf. 1 C. & R. 47-48; R. & S. 330 (Cardiff, etc., Bill).

(*u*) 2 S. & A. 104. See also 1 B. 55.

(*a*) 1 C. & S. 27; 2 C. & R. 40; 3 *ibid.* 78, 399, 403.

(*b*) 1 C. & S. 28; 2 C. & R. 231; R. & M. 139.

(*c*) 1 C. & S. 28-29.

(*d*) S., App. 110; 1 C. & S. 31, App. 37; 3 C. & R. 315; R. & M. 133; R. & S. 330. Cf. as exceptional cases, R. & S. 224; 1 C. & S. 29, 32; 2 C. & R. 100; R. & M. 67, 113; 1 S. & A. 1; 1 S. & B. 48; R. & M. 59, 187; R. & S. 330-33; 1 C. & S. 28, 34; R. & M. 89; 1 S. & A. 261; 2 S. & A. 39-40; 1 S. & B. 157.

(*e*) R. & M. 89; 1 S. & B. 114, 157.

(*f*) 1 C. & S. 36, App. 35; 1 S. & A. 261.

(*g*) 1 C. & R. 219-20.

(*h*) 1 C. & R. 207.

allege that the trade, business or interest will be injuriously affected by provisions contained in the Bill in question (i).

#### LOCUS STANDI ON THE GROUND OF CONTINGENT DAMAGE

In accordance with the general principle that, to entitle them to a *locus standi*, petitioners should prove that their property or interests are directly and specially affected by a bill, petitioners whose property was not taken, but who apprehended injury by reason of the contiguity of a railway, have been refused a hearing (k). In some exceptional cases, however, of special danger, disturbance, or injury, petitioners so affected have been allowed a hearing (l); and owners and occupiers of houses who complained that their property, although untouched, would be injured or shaken by a proposed line, have been heard and have obtained protective clauses (m). The owners of property, in proximity to a railway proposed to be worked by electricity, claiming to be heard on the ground of injury from vibration, have in some cases been granted (n), and in others been refused (o), a *locus standi*. It has been laid down as a general principle that a landowner or inhabitant cannot claim a *locus standi* on the ground that proposed works will destroy the beauty or salubrity of a place (p); but in two cases, occurring in 1891, petitioners claiming to be heard upon such grounds were granted a *locus standi* (q). The owners of glass works, and the owners of business premises, who apprehended injury from the obstruction of light by proposed works, have also been heard, their case being considered sufficiently exceptional to justify a departure from the general principle of previous decisions—viz. that landowners can only be heard when their land is actually taken or interfered with (r). The trustees of a hospital who alleged that, although no land was to be taken by a railway, great injury would arise to the inmates from the noise and vibration of passing trains, have been refused a *locus standi* (s). The

(i) The *locus standi* of such bodies was first dealt with by standing order in 1884 (see C. J. (1884) 349. The S.O. then passed was confined to objections to railway rates and fares. This S.O. as subsequently amended expressly prohibited the Court of Referees entertaining any question within the jurisdiction of the Railway and Canal Commission or the Railway Rates Tribunal. Since all railway rates and fares are now within the jurisdiction of one or other of those bodies, the S.O. was omitted in the 1945 revision of Standing Orders. S.O. 95 reproduced a second S.O. of wider scope than the first; it was originally passed in 1904 (see C. J. (1904) 414). For decisions of the Court of Referees see 2 S. & A. 205, 225, 229; 2 S. & A. 221; 1 S. & B. 68, 97, 113, 152; 2 *ibid.* 54; 2 S. & A. 228; 1 S. & B. 42, 126; 2 *ibid.* 3; 1 B. 98.

(k) S. 26-28, App. 101, 102, 117; 1 C. & S., App. 45; 1 C. & R. 80; 2 *ibid.* 38, 124, 249; 3 *ibid.* 86; R. & M. 208; 2 S. & A. 123-24, 157; 1 S. & B. 2.

(l) 1 C. & S. 40-44; 2 C. & R. 2, 14, 75.

(m) 2 C. & S. 189; 1 C. & R. 46; R. & S. 44-45; 2 S. & A. 90.

(n) 2 S. & A. 100, 126, 128.

(o) 2 S. & A. 65, 192.

(p) 1 C. & R. 203; 3 *ibid.* 30, 125; 1 S. & A. 264, 330; 2 *ibid.* 157; 1 B. 28.

(q) Local Government Provisional Order Bill, 1891 (R. & S. 127). Manchester, Sheffield, and Lincolnshire Railway (Extension to London, etc.) Bill, 1891 (R. & S. 130 *et seq.*). In the latter case a *locus standi* was granted to owners, occupiers, etc., whose property was not taken, but who claimed that its amenity would be injured by the proposed line, known until 1922 as the Great Central Railway.

(r) 1 C. & R. 258; and cf. R. & S. 213-14; 2 S. & A. 235-36.

(s) North British Railway Bill, 1877 (2 C. & R. 54); London and North-Western Railway Bill, 1889 (R. & M. 263). The petitioners in this case obtained a *locus standi* and a protective clause before a committee in the House of Lords.

trustees of a church, alleging that the services would be interfered with by the proximity of a railway, have in one case been refused, and in another been allowed, a hearing upon that ground. In both cases they were allowed a *locus standi* on the further ground of obstruction of access (t). In numerous cases, petitioners complaining of interference with their access to their premises, or to the sea, or other waterside, have been allowed a *locus standi*, although their property was not directly affected (u). It has been held that the displacement of population, involved by a bill, was not a sufficient ground for allowing a school board to be heard in opposition (a).

#### LOCUS STANDI AGAINST BILLS AFFECTING WATER AND WATER SUPPLY

The *locus standi* of river conservancy Boards and landowners in opposing bills affecting water and water supply is now regulated by S.O. 99. By that order the Court of Referees has a discretion to grant a *locus* if it is alleged that under the provisions of the bill the river or any water or water supply of which the conservancy board or landowners may legally avail themselves will be diminished or seriously affected (b).

By S.O. 100 the Court also has a discretion to allow a *locus standi* to land drainage authorities who allege that their district will be injuriously affected by the provisions of a bill authorizing the abstraction or impounding of water, or the discharge of water into watercourses within their district.

#### LOCUS STANDI AGAINST AMALGAMATION BILLS

In the case of amalgamation bills a larger latitude than usual is generally allowed to opponents (c). The general ground upon which petitioners have been admitted to oppose amalgamation bills is that the amalgamation itself will injuriously affect them, and not that they can show any grievance resulting from past legislation (d).

(t) 2 C. & R. 249; R. & S. 139; and cf. 2 S. & A. 58, 235-36, and 1 S. & B. 148 (*locus standi* disallowed).

(u) 2 C. & R. 139, 197; 3 *ibid.* 60, 70, 226; R. & M. 46, 145; R. & S. 20, 23, 137-39, 151-52, 212; and cf. R. & M. 92; 2 S. & A. 210-12; 1 S. & B. 109.

(a) 3 C. & R. 182, 185. And as to other and later cases where particular grounds, on which petitioners claimed a hearing, were not held to be sufficient for granting a *locus standi*, cf. 2 S. & A. 206, 214-16.

(b) The S.O. reproduced by the existing S.O. 99 was originally passed in 1902. As to decisions of the Court of Referees before that date see 1 C. & S. 24 (right of owners of surface water as landowners); 2 C. & S. 50, 53; 1 C. & R. 3; 3 *ibid.* 111; R. & M. 195-6; 1 S. & A. 334 (rights of millowners the working of whose mills was alleged to be affected; see also S.O. 16); 2 C. & R. 212; 3 *ibid.* 447; 2 S. & A. 31 (riparian and other owners entitled to use river water). In the case of a proposed abstraction of underground water by a waterworks bill, the general rule was not to allow a *locus standi* to petitioners whose water supply might be affected, unless evidence was forthcoming to prove that the underground water flowed in a well defined channel (see *Chasemore v. Richards*, 7 H. L. Cases 349 & 2 C. & S. 199; 3 C. & R. 239; R. & M. 95; 1 S. & A. 134; 3 C. & R. 179, 385, 477; 1 S. & A. 252. For cases under the S.O. see (*locus standi* allowed) 2 S. & A. 88, 117; 1 S. & B. 8, 51, 160; 2 *ibid.* 64, 73; (limited *locus standi* allowed) 2 S. & A. 162; 2 S. & B. 83; (*locus standi* disallowed) 2 S. & A. 205, 207, 227; 1 S. & B. 160.

(c) 1 C. & R. 240; 2 S. & A. 116.

(d) 1 C. & R. 77-78. Cf. also 1 C. & R. 240-47; 3 *ibid.* 58, 97, 404; R. & S. 240, 334; 1 S. & A. 90, 173; 2 *ibid.* 113, 139.

Before the passing of the Railways Act in 1921, numerous questions arose in regard to the *locus standi* of railway companies in opposing bills for the amalgamation of other companies (e); and such *locus standi* has been admitted (f) or refused (g), according to the degree in which the interests of the opposing companies have been affected. These decisions, however, are now practically obsolete since the amalgamations effected by the act of 1921.

Another fruitful source of disputes as to *locus standi* is the case of petitioners against bills for the amalgamation of canal companies, of dock companies, of canal with dock companies, of canal or dock companies with railway companies, of tramway companies, of gas companies, and of water companies; and there are numerous decisions by the Court on these points (h).

#### LOCUS STANDI ON THE GROUND OF COMPETITION (S.O. 92)

It was formerly held, as a parliamentary rule, that competition did not confer a *locus standi*; but in course of time this rule was considerably relaxed, and numerous exceptions were, in practice, admitted; and under a standing order, originally passed in 1853 (now S.O. 92), petitioners have generally been admitted to be heard against a bill on the ground of competition, the Court of Reference, in the exercise of their discretion under this standing order, allowing (i) or refusing (k) a *locus standi*,

(e) *Vide* Report of joint committee of Lords and Commons, of 1872, on Railway Amalgamation.

(f) S., App. 163; 1 C. & S., App. 100; 2 C. & R. 172, 243; 3 *ibid.* 143, 145, 306; R. & M. 177; R. & S. 334; 1 S. & A. 31.

(g) S., App. 136, 138; 1 C. & S., App. 101-102; 2 C. & R. 36, 103, 299; 3 *ibid.* 57, 58, 88, 107, 494; R. & M. 255; 1 S. & A. 173.

(h) 1 C. & R. 73 (canal); 3 *ibid.* 15, 319 (docks); 1 *ibid.* 28, 112; R. & S. 217; 1 S. & A. 145 (docks and railway); 2 C. & S. 218; 1 C. & R. 141 (gas); 3 *ibid.* 38 (tramways); 1 *ibid.* 59; 2 *ibid.* 307 (water).

(i) *Locus standi* allowed: To railway companies, dock owners, etc., against railway, dock, etc., bills, 3 C. & R. 371; R. & M. 87; 2 S. & A. 52, 224; 1 S. & B. 24-25, 26, 27, 39, 76, 81, 82, 83; 2 *ibid.* 23, 49; and (limited), 1 *ibid.* 86. To steamboat owner against a railway bill, 2 S. & A. 107. To corporation owning tramways against railway bill seeking power to run omnibuses, 1 S. & B. 38. To promoters of a new tramway against a link in existing lines affecting the proposed line, 1 S. & B. 138. To steam tramway companies, etc., against railway bills, 3 C. & R. 285, 471. To railway companies against tramways, steam tramways, or electric tramways bills, 2 S. & A. 57; 3 C. & R. 455; 1 S. & A. 242; 2 *ibid.* 23, 118, 245. To omnibus companies against tramways bills, 1 C. & S., App. 120; 2 *ibid.* 87-89; 2 S. & A. 19; 1 S. & B. 73. To owners of a bridge or pier against bills authorizing another bridge or pier, R. & S. 23; 2 S. & A. 5, 249. To gas, etc., companies, 2 C. & S. 100; 1 C. & R. 50; 2 *ibid.* 229; 3 *ibid.* 109; 1 S. & B. 18, 20, 49, 71, 89, 98; 2 *ibid.* 67, 91; and (limited), 2 S. & A. 249; 1 S. & B. 129; 2 *ibid.* 78. And to other petitioners, 1 S. & A. 170, 202, 298; 2 *ibid.* 81, 177, 201, 210; 1 S. & B. 68, 102; 2 *ibid.* 57, 86. See also 1 S. & B. 35-38, where a *locus standi* was given to petitioners on account of the novel character of the scheme proposed. Limited *locus standi* allowed, 1 S. & B. 47.

(k) *Locus standi* disallowed: To railway companies against railway or dock bills, 2 S. & A. 160; 3 C. & R. 373, etc.; 1 S. & B. 92, 150. And against tramways or electric tramways bills, 2 C. & S. 142; 1 C. & R. 13; 2 S. & A. 149; R. & S. 242; 1 S. & A. 157, 322. To electric railway company against power to run omnibuses in a railway company's bill, 1 S. & B. 24. To hotel keepers, 3 C. & R. 23, and to railway-carriage makers, 2 C. & R. 50, against powers sought in a railway company's bill. To cab proprietors against a tramways bill, 2 C. & R. 323. To owners of a bridge, 2 C. & R. 89; R. & S. 36; 1 S. & A. 195. To gas or water companies, 1 S. & A. 46; 2 S. & A. 38, 194. To a corporation supplying gas, 1 S. & B. 162. To electric supply companies, 2 S. & A. 181, 189, 200, 226; 1 S. & B. 15; 2 *ibid.* 104. And to other petitioners, 3 C. & R. 131; 1 S. & A. 250; 2 *ibid.* 29, 169, 233; 1 S. & B. 103.

according to their opinion of the extent and directness of the competition in respect of which the petitioners claim to be heard. In cases where it was only proposed to improve an existing competition, a *locus standi* has not been allowed (*l*), but where the nature of the competition is changed (*e.g.* by becoming rate-aided (*n*), or where a tunnel is proposed to take the place of a ferry (*n*), a *locus standi* has been allowed.

A railway company has been granted a limited *locus standi* against a bill authorizing another company to take lands which the petitioners had scheduled for the purposes of a bill that they themselves were promoting (*o*).

It has been held that the promoters of a *bona fide* application to a government department for a provisional order should be entitled to a *locus standi* against a bill for a competing scheme, conditionally only on the application not being actually rejected before the hearing of the bill in committee (*p*).

In the case of a bill authorizing a railway company to own and run steamboats, the claim of steamship owners' associations to a *locus standi* has frequently been considered by the Court of Referees; and a *locus standi* against such a bill has been granted, on the ground of competition, to other railway companies (*q*), to dock companies (*r*), to steam-packet companies (*s*), and to merchants or shipowners trading to ports affected (*t*), but has been refused where the interests of such petitioners were not considered to be sufficiently affected to entitle them to be heard on this ground (*u*).

#### LOCUS STANDI AGAINST "RUNNING POWERS" ETC. PROVISIONS

The *locus standi* of a railway company over whose system another railway company seeks to obtain running powers or other facilities is secured by S.O. 94. But a railway company enjoying running powers over another line has been refused a *locus standi* against the concession of similar powers to a third company (*a*), except in some special cases (*b*); and in cases where it has been alleged that this concession was for the purposes of amalgamation or for competition, such *locus standi* has been granted (*c*) or refused (*d*) according to the extent to which the status

(*l*) 2 C. & R. 133, 279; 3 *ibid.* 225, 357, 378; R. & M. 118, 197; R. & S. 243; 2 S. & A. 150.

(*m*) Proceedings of the committee on the Sunderland Corporation Bill, 1935, where the committee, acting under S.O. 97 (now 91) allowed a *locus standi* to petitioners against an additional provision. The petition being against an additional provision and *not against the bill* the question of *locus standi* was not determined by the Court of Referees, but by the committee on the bill.

(*n*) 1 B. 44. See also 1 B. 83.

(*o*) 1 S. & A. 176. Cf. also 2 *ibid.* 91; 2 C. & S. 242.

(*p*) 1 C. & R. 234, 235; 3 *ibid.* 100, 114; and cf. 1 S. & A. 301; 2 *ibid.* 248; 1 S. & B. 55.

(*q*) 1 S. & A. 229; 2 *ibid.* 135; 1 S. & B. 150.

(*r*) R. & M. 270; 1 S. & B. 39.

(*s*) R. & S. 197; 2 S. & A. 107; and cf. R. & M. 100.

(*t*) R. & M. 241-42, 251, 270; and cf. R. & S. 346; 2 S. & A. 25, 216-21, 223.

(*u*) R. & M. 241, 270; R. & S. 111; 2 S. & A. 109, 115, 174.

(*a*) S. 56 *et seq.*; 1 C. & R. 172; 3 *ibid.* 267, 299 (London and Eastbourne Railway Bill); R. & S. 3; and cf. also 1 S. & A. 90.

(*b*) 1 C. & R. 78, 96; R. & M. 62.

(*c*) 1 C. & S., App. 102; 1 C. & R. 173; 2 *ibid.* 243.

(*d*) 2 C. & R. 103, 245; 3 *ibid.* 57, 88, 89, 267.

of the petitioners was to be altered. A railway company having running powers over two railways belonging to another company has been refused a *locus standi* against a bill promoted by an independent company to connect these two railways (e).

LOCUS STANDI OF "FRONTAGERS" AGAINST A TRAMWAY BILL (S.O. 102)

In the case of a tramways bill, the *locus standi* of the petitioners commonly known as "frontagers" is dealt with by S.O. 102. By that order a *locus standi* as of right is conferred on owners, lessees and occupiers of premises in any street or road along which a tramway is proposed to be constructed, who allege that the construction or use of the tramway will injuriously affect them in the use or enjoyment of their property or in the conduct of their trade or business. Further, the Court of Referees are given a discretion to grant a *locus standi* to owners, lessees and occupiers of premises which, though not situate in such street or road, have access materially dependent thereon (f).

LOCUS STANDI OF COUNTY AND MUNICIPAL AUTHORITIES, ETC.  
(S.Os. 96-101)

Of the six standing orders (S.Os. 96 to 101) which deal with the *locus standi* of county, municipal and other public authorities, two (S.Os. 97 and 98) grant *locus standi* as of right, the others are of a discretionary nature. S.O. 97 confers the right on the Common Council of the City of London, and the council of any borough or urban or rural district alleging that their city, borough or district may be injuriously affected by the provisions of any bill relating to the lighting or water supply thereof or the raising of capital or the borrowing of money for any such purpose (g). S.O. 98 confers the right on the council of any county alleging that the county or any part thereof may be injuriously affected by the provisions of any bill relating to the water supply of any area whether within or without the county, or proposing to authorize the construction or reconstruction of a tramway along any county road or any other road within the county to the maintenance or repair of which the county council contribute (h).

But the principal standing order is 96 which confers on the Court of Referees a general power of granting a *locus standi* to any local authority (i)

(e) 2 S. & B. 12.

(f) The latter part of S.O. 102, conferring the right to grant a discretionary *locus*, was added in 1903 to a standing order originally passed in 1870 (see C. J. (1870) 221) and amended in 1886 (see C. J. (1886) 281). For decision of the Court with reference to this part of the S.O. see 2 S. & A. 237.

(g) For the interpretation of this S.O. see R. & S. 125-27; 2 S. & A. 106. The question whether the words "relating to" are to be construed as meaning "affecting" was discussed in 2 S. & B. 15, 42. The word "alleging" implies allegation of facts: 2 S. & B. 102.

(h) *Locus standi* allowed: 2 S. & A. 47; 1 S. & B. 44; (against waterworks bill): 2 S. & A. 63; 2 S. & B. 35, 100 (against tramways bills); *locus standi* disallowed: 2 S. & A. 46 and 53. *Locus standi* limited: 1 S. & A. 85-90; 2 *ibid.* 164-5.

(i) For definition of "local authority" see S.O. 1. That definition is wide enough to cover all the authorities to which two standing orders, 136 and 138, in the edition of standing orders in force before the 1945 revision applied, and has made obsolete numerous decisions of the Court of Referees as to the scope of those orders.



of any area, the whole or any part of which is alleged in the petition to be injuriously affected. The same order authorized the grant of a *locus standi* to any inhabitants of the area of a local authority, and it is this *locus* of inhabitants which has been the chief source of dispute before the court (*k*).

Of the other standing orders dealing with the *locus standi* of public authorities, S.O. 99 relating to river conservancy boards, and S.O. 100 relating to land drainage authorities, have already been described (p. 880). S.O. 101 enables a *locus standi* to be granted to conservators having the control, regulation or management of any forest, common or open space alleged to be injuriously affected by the bill against which the petition is presented.

#### LOCUS STANDI OF CONSUMERS OF GAS AND WATER

In many cases, consumers of gas and water have been admitted to oppose gas and water bills affecting the area of supply in which they are consumers (*l*), and in deciding such cases the court will have regard to the volume of interest concerned (*m*). But where the petitioners were only affected in common with other ratepayers they have not been allowed a *locus standi* (*n*). A *locus standi* has also been refused to residents in a new district which it was proposed to supply with gas, on the ground that they were not compelled to use the gas to be supplied or restrained from manufacturing their own (*o*).

#### LOCUS STANDI OF SHAREHOLDERS, PREFERENCE SHAREHOLDERS, AND "DISSENTIENTS" AT A "WHARNCLIFFE" MEETING (S.O. 93)

The doctrine that shareholders or members of a corporate body are legally bound by the acts of the majority used frequently to be invoked

(*k*) 2 C. & R. 78; 3 *ibid.* 382, 442; R. & M. 110; R. & S. 72, 222; 1 S. & A. 312. C. & S. 84 *et seq.* And cf. R. & S. 60 *et seq.*; 1 S. & A. 326; 2 *ibid.* 11, 239, 240, 242, 251. In the following cases a *locus standi* was allowed: R. & S. 227, 337 (extension of time bills); R. & S. 34, 237, 327; 1 S. & A. 9, 47, 154, 273, 334; 2 *ibid.* 119; 1 S. & B. 6, 8, 9, 27, 31, 44, 50, 100, 101; 2 *ibid.* 1, 26, 46, 61, 73, 86, 94, 97. To road authorities of adjoining districts, against clause in bill authorizing corporation to run omnibuses outside the borough, 1 S. & B. 13. Limited *locus standi* allowed, 1 S. & B. 42, 84; 2 *ibid.* 27, 43. *Locus standi* disallowed, 1 S. & A. 216, 328, 329; 2 *ibid.* 33, 141, 165, 177, 181, 213, 223, 225, 234-35; 1 S. & B. 23, 63, 75; 2 *ibid.* 16, 37, 50, 63, 71, 89; in the case of extension of time bills, 1 S. & B. 33, 107; 2 *ibid.* 17, 100, 101; and cf. 2 S. & A. 241; and *Parl. Deb.* (1904) 136, c. 92-106 (petition of J. Taylor against Maidenhead Bridge Bill, 1904). Inhabitants whose right to be heard was objected to on the ground that they were represented by the local authority, have been granted a *locus standi*, 2 C. & R. 47, 52; 1 S. & A. 254; 1 S. & B. 140. In some cases, however, where a local authority has also petitioned against a bill, a *locus standi* has been refused to inhabitants if they were not of a representative character, R. & S. 72; 2 S. & A. 64, or if the points they urged were similar to those urged in the local authority's petition, 2 C. & S. 5. Cf., however, *infra*, as to the case of consumers of gas or water.

(*l*) 1 C. & R. 17, 51, 135, 141, 143, 213; 2 *ibid.* 9, 10; 3 *ibid.* 40, 118; R. & M. 12 (water), 137, 191 (gas); R. & S. 53; 1 S. & A. 254; 2 S. & B. 19, 52, 65, 84. A landowner has been granted a *locus standi* against a bill transferring the supply of water from a corporation to a new company, 1 S. & B. 118.

(*m*) 2 S. & B. 19, 65. See also *ibid.* 76.

(*n*) 1 C. & R. 144.

(*o*) 1 C. & R. 267; 2 *ibid.* 78.

as a ground of objection to the *locus standi* of individual shareholders who had petitioned against a bill promoted by the corporate body in which they held shares. In 1853 the House passed a standing order which, as reproduced by the first part of S.O. 93, runs :—

Where a Bill is promoted by an incorporated company, society or association, members thereof shall not be entitled to be heard before the Committee against the Bill, unless their interests, as affected thereby, are distinct from the general interests of the company (*p*).

The decisions of the Court of Referees have consequently been founded, in cases of this kind, upon the nature of the petitioners' interest, and the manner in which it is affected by the provisions of the bill (*q*). For instance, the proprietor of preference shares has a special interest, which is often distinct from or opposed to that of the general body of shareholders, and his *locus standi* has regularly been allowed (*r*), unless it has appeared that his special interest is not such as to entitle him to be heard (*s*).

The importance of these decisions has largely disappeared as the result of the passing in 1876 of a standing order securing the *locus standi* of petitioners who have dissented at a "Wharncliffe" meeting.

This standing order has been reproduced in the revised edition of 1945 as a proviso to the above-mentioned S.O. 93.

For many years before the adoption of this standing order by the Commons a similar rule prevailed in the Lords; and shareholders who had dissented from the bill at the meeting called in pursuance of the Wharncliffe order were expressly permitted to be heard, and were even heard without such dissent.

It appears at present to be the case that any shareholder who has dissented at a Wharncliffe meeting is entitled to be heard on his petition, but that if he has not so dissented he is only entitled to be heard if his interest, or the interest of the class of shareholders of which he is a member, is different from that of the general body of shareholders.

#### LOCUS STANDI OF RATEPAYERS AND OTHER PERSONS REPRESENTED

Closely akin to the case of shareholders is the case of petitioners who—in the capacity in which they petition—may be held to be represented by a local authority or other body. Ratepayers, for example, have not been allowed to be heard, as such, against a bill promoted by a corpora-

(*p*) 3 C. & R. 77.

(*q*) 1 C. & S., App. 8; R. & M. 181; cf. also 1 C. & S. 103; 1 C. & R. 43, 51, 102; 2 *ibid.* 101, 169, 273; 3 *ibid.* 91; R. & M. 3, 155, 162, 225.

(*r*) South Eastern (Power to Discontinue Interest, etc.) Bill, 1850, Suppl. to Votes, 1850, pp. 165, 195; Shropshire Union, etc., Bill, 1850, *ibid.*, pp. 72, 73; York, Newcastle, and Berwick, etc., Bill, 1850, *ibid.*, p. 102; 1 C. & R. 166; 2 *ibid.* 169; 3 *ibid.* 77. In 1872 a limited *locus standi* was granted to preference shareholders against the capital clauses of a bill and against so much of the preamble as related thereto, 1 C. & S., App. 163; 2 *ibid.* 257-58.

(*s*) 3 C. & R. 446; R. & M. 52, 163; 199; R. & S. 26; 1 S. & A. 340. Suppl. to Votes, 1854-55, p. 259.

tion (*t*), or other local authority (*u*), of which they are electors; nor individual members of bodies whether corporate or unincorporated against bills promoted or approved by those bodies (*a*).

In 1901, individual freemen of the Watermen and Lightermen's Company, petitioning against the Thames Piers and River Service Bill, were refused a *locus standi*, although the governing body of the company—by whom, it was contended, they were represented—had not petitioned (*b*).

On the other hand, owners (*c*) who petition against a bill promoted by a corporation (*d*) or local authority (*e*), and imposing upon their property a new liability to rates (*f*), have been granted a *locus standi*, having special interests which are not considered to be represented by the promoting body, though in the case of the Ilkley Local Board Bill, 1871, the Court of Referees determined that certain petitioners, being owners of property and ratepayers, could not be heard against the bill, being represented by the board by whom the bill was promoted (*g*). In the case of a borough extension bill opposed by a rural sanitary authority, not only owners but ratepayers within the part of the district proposed to be added to the borough have been heard in opposition, as well as the authority itself, their interests being considered sufficiently distinct to entitle them to a separate hearing (*h*).

In 1904 a *locus standi* was granted to two railway companies who claimed to be heard as ratepayers against the Wolverhampton Corporation Bill on the grounds that they were affected differently from other ratepayers and that they desired to ask for differential rating (*i*). In 1897 the rating authorities of two parishes were granted a *locus standi*, limited to the question of rating, against a railway bill, in addition to the superior authority of the larger district of which these parishes formed a part (*k*).

#### LOCUS STANDI AGAINST BILLS BROUGHT FROM THE LORDS

A petitioner who has not opposed a bill in the other House is not precluded from being heard upon his petition in the House of Commons (*l*);

(*t*) 1 C. & R. 211; 3 *ibid* 376-77; R. & M. 74; R. & S. 287; 1 S. & A. 316; 2 *ibid*. 126, 243-45; 1 S. & B. 58.

(*u*) 2 C. & S. 97, 265; 1 C. & R. 196; 2 *ibid*. 9; 1 S. & A. 129; 2 *ibid*. 41.

(*a*) Committee on Queensferry Passage Bill, Group 13, 1848; Committee on Mersey Docks and Harbour (New Works) Bill, Group J, 1858; R. & M. 288-89.

(*b*) 2 S. & A. 82.

(*c*) Owners are not, as such, ratepayers, and only ratepayers have a voice in the election of, and are therefore represented by, a local authority.

(*d*) 2 C. & S. 121; 1 C. & R. 211, 229; 2 *ibid*. 149, 233; R. & M. 76-78; R. & S. 349; 2 S. & A. 175; 1 S. & B. 142; 2 *ibid*. 30 (limited), 69.

(*e*) 1 C. & R. 196, and cf. R. & S. 276-78; 1 S. & A. 39, 139; 2 *ibid*. 72; 1 S. & B. 77.

(*f*) The *locus standi* thus given to an owner has also been given to the leaseholder (for a substantial term of years) of property rendered liable to increased taxation, R. & S. 349-53.

(*g*) 2 C. & S. 97. Cf. also 3 C. & R. 376-78; R. & M. 74; R. & S. 276; 2 S. & A. 153; 1 S. & B. 3, 65; 2 *ibid*. 30, 84.

(*h*) 2 C. & R. 47; R. & M. 77. But cf. 2 S. & A. 228-29.

(*i*) 2 S. & A. 254. See also 2 S. & B. 76. But cf. 1 S. & B. 1, 54, 129.

(*k*) 1 S. & A. 222. Cf. also 2 S. & A. 11, 12.

(*l*) S., App. 162.

but the *locus standi* of petitioners has been disallowed, where they have consented, in the other House, to protective clauses (*m*).

Petitioners, who had tendered a clause in the House of Lords, which was rejected by the committee, and who had then accepted two other clauses, with alterations suggested by them, were held not to be precluded from a hearing before the committee of the Commons, as the clauses they had accepted were of minor importance, and had only been acquiesced in conditionally upon the acceptance of their own clause, which had been rejected (*n*). If the parties agree to abide by the decision of the committee in one House they will not be heard in the other: but if they have not so agreed (*o*) it is otherwise.

By S.O. 130 of the Commons, reproducing a standing order originally passed in 1888 (*p*), it is expressly provided that—

“A petitioner against a bill originating in the House of Lords who has discussed clauses in that House shall not on that account be precluded from opposing the preamble of the bill in this House.”

Parties are occasionally precluded from opposing a bill by some special circumstance, such, for example, as an undertaking to this effect given to the promoters.

In 1892, petitioners who had been precluded, under an agreement with its promoters, embodied in an Act of Parliament, from opposing a bill, which was first introduced in the Lords, were granted a *locus standi* against it in the Commons, the bill having been so materially amended by the Lords' committee that, as brought down to the second House, it was no longer the bill which the petitioners were bound not to oppose (*q*).

#### LOCUS STANDI OBJECTED TO ON GROUND OF WANT OF PRECISION OR INFORMALITY

An objection which *inter alia* has sometimes been taken to the *locus standi* of a petitioner is, that the allegations of his petition are not sufficiently specific (*r*); but the Court of Referees have rarely refused a *locus standi* for this reason alone (*s*), and, as already pointed out (see p. 873), S.O. 128 expressly enables the committee on a bill to require a petitioner to give in a more specific statement of the grounds of his opposition.

An analogous objection that has frequently been taken to the *locus standi* of petitioners is that their petition is informal, according to the rules and orders of the House applicable to petitions generally (see Chapter XXIX), or as specially applicable to petitions against private bills.

The informality which has been the most fruitful source of disputes

(*m*) S. App. 95; 2 C. & R. 27; R. & S. 39; 2 S. & A. 85.

(*n*) 1 C. & R. 275.

(*o*) Whitehaven, Cleator, etc., Railway Bill, 1875, 1 C. & R. 200.

(*p*) C. J. (1888) 449.

(*q*) R. & S. 231-32.

(*r*) Suppl. to Votes, 1847-48, p. 322; 1849, p. 173; 1851, pp. 103, 108, 109, 110; Minutes of Committees, 1857, ii, p. 707; *ibid.* 1858, i, p. 142; 1 C. & R. 22, 201; 3 *ibid.* 50, 81, 442; R. & M. 213.

(*s*) 1 S. & A. 341; and cf. 1 C. & R. 207; 3 *ibid.* 301, 457 (landowners' petition); 2 S. & A. 106 (petition of local authority under S.O. 134a (now 97)); 1 S. & B. 43, 100, 134, 143.

before the Court of Referees has been with reference to the signature of petitions (*t*).

The Court of Referees have declined to inquire into the genuineness of the signatures to a petition that being a matter for the consideration of the House (*u*).

#### LOCUS STANDI AND THE " FILLED-UP " BILL

The bill before the Court of Referees during their consideration of a case is the bill as deposited, not the " filled-up " bill (see p. 859) as proposed to be amended and submitted to the committee by the promoters; and a petitioner is not refused a *locus standi* because the promoters undertake, by amendments in the filled-up bill, to meet his objections to the bill as deposited (*a*), but has uniformly been allowed to go before the committee to see that this undertaking is carried out (*b*).

In some cases (occurring before the constitution of the Court of Referees) where land had been shown on the deposited plans as intended to be taken, but the amended bill did not propose to interfere with it, or where other clauses affecting the interests of petitioners had been withdrawn, committees held that the petitioners were not entitled to be heard (*c*). In the case of the Severn Valley Railway Bill, 1856 (for extension of time for purchase of land and completion of works), the owners of certain lands which had been excluded from the operation of the bill, as amended, were not heard by the committee. In the case of the Lancaster and Carlisle Railway Bill, 1858, however, it was held that a landowner, whose lands were proposed to be taken in the bill, as read a second time, was entitled to be heard, though his lands were omitted from the bill as submitted to the committee. The Court of Referees, not having the " filled-up " bills before them, have supported the right of landowners to be heard, where their lands were proposed to be taken by the bill as deposited (*d*).

(*t*) *Locus standi* allowed: 1 C. & J. App. 7 (Petition signed by majority of committee appointed to conduct opposition to the bill); 1 C. & R. 272; 1 C. S. App. 3-4 (petition signed by Chairman of committee of board of guardians acting as rural sanitary authority under a resolution of the sanitary authority, the guardians in their capacity of sanitary authority having no common seal); R. & M. 14, 270-1 (petition signed by persons on behalf of company when the authority to sign was proved to the satisfaction of the court although no allegation to that effect contained in petition); R. & S. 163 (vicar and churchwardens authorized to sign at public meetings); 1 S. & B. 138 (petition signed by two of the promoters of competing bill on behalf of all the promoters); 2 C. & R. 25, 261; 3 *ibid.* 316; R. & M. 14 (petition of company signed by directors without special authority); 1 C. & R. 72 (petition of landowner signed by agent holding a general power of attorney for the administration of the estate); but evidence of authority not allowed where agent had no power of attorney, 3 C. & R. 155. *Locus standi* disallowed: S. App. 97 (petition signed by some only of a body of trustees); S. App. 174 (petitioner subscribing petition for other parties); 1 C. & R. 117 (petition signed by chairman of Commissioners containing no allegation that he was authorized to sign on their behalf).

(*u*) 1 C. & R. 119; 2 *ibid.* 321. Cf. the special report from the committee on the Glasgow Municipal Extension Bill, 1879, who inquired into the genuineness of the signatures to a petition against the bill, and refused a hearing to the parties appearing before them on the petition, C. J. (1878-79) 176.

(*a*) The bill as deposited, however, has been considered by the Court of Referees to include such amendments as the Standing Orders Committee shall have required to be made in it as a condition of its proceeding; Renfrew Burgh, etc., Bill, C. J. (1898) 75; 1 S. & A. 274; Airdrie, etc., Tramways Bill, C. J. (1900) 55; 2 S. & A. 2.

(*b*) 1 C. & R. 78; R. & S. 341-42, 352; 1 S. & A. 19-20; 2 *ibid.* 158-59.

(*c*) Cork and Waterford Railway Bill, 1854; Colne Valley and Halstead Railway, and Witney Railway Bills, Group 5, 1859; Wimbledon and Dorking Railway Bill, 1860; Teign Valley Railway Bill, 1863.

(*d*) S. 19; 1 C. & S., App. 47, 57, 110; 2 *ibid.* 117.

On the other hand a person who objected to an amendment proposed in the "filled-up" bill would petition not against the bill but against the alterations of the bill, and the committee on the bill would have to determine his *locus standi*.

#### LOCUS STANDI OF PETITIONERS AGAINST A CONSOLIDATION BILL

In the case of a consolidation bill, the *locus standi* of a petitioner is not allowed where he is affected not by the bill but by the provisions of a former Act (*e*); or where no fresh powers affecting the property of a petitioner are sought by the bill (*f*); and the decision in the Birmingham Corporation (Consolidation) Bill, 1883, whereby petitioners were allowed to be heard against the provisions of the Acts proposed to be consolidated, would appear to be inconsistent with the general practice (*g*). The injury alleged must not be one due to past legislation, untouched by the bill, but injury which is or may be occasioned under the bill, either for the first time, or in aggravation of injury already suffered (*h*).

Pure consolidation bills now usually originate in the House of Lords and are referred to a joint committee. The petitions against such a bill stand referred to the committee, who are directed by the order of reference not to take into consideration any petition if the petitioners seek to alter the existing law (*i*). (See also p. 917).

#### MISCELLANEOUS CASES OF LOCUS STANDI

Cases sometimes arise before the Court of Referees where *locus standi* is claimed on exceptional grounds, and are decided on their individual facts. For example, a telephone company, who alleged that the propriety of an electric tramway (authorized, but not made) would injure their work by induction and who desired to ask for protective clauses in a bill for the extension of time for its completion, was granted a *locus standi* on the ground of the change which had taken place in the scientific knowledge and practical application of electricity (*k*).

Again, petitioners using a canal for the purposes of traffic have claimed, sometimes successfully (*l*), and sometimes unsuccessfully (*m*), to be heard against a bill for the purchase of the canal by a railway company. It has also been held that mere transfer of powers from one body to another gives no right to petition (*n*).

A *locus standi* has also been granted to petitioners against a clause in a bill, on the ground that the clause would establish a precedent (*o*).

(*e*) Suppl. to Votes, 1847, ii, 1070, 1113; 3 C. & R. 28, 58, 96, 98; R. & S. 208; 1 S. & A. 100; 2 *ibid.* 71, 230.

(*f*) 2 C. & R. 207; R. & M. 26, 70; R. & S. 1, 56, 93.

(*g*) 3 C. & R. 257.

(*h*) 1 C. & S. 95.

(*i*) C. J. (1929-30) 29.

(*k*) R. & S. 102, 167, 242, 259; 2 S. & A. 34, 77. Cf. *ibid.* 62, 86, 98. For other cases where the decision was based on the fact whether the existing law did or did not afford sufficient protection, see R. & S. 242-45, 256-58, 262; 1 S. & A. 108, 282; 2 S. & A. 69, 145, 193, 237, 241; 1 S. & B. 48, 54, 106, 115; 2 S. & B. 8.

(*l*) 1 C. & S., App. 66, 126.

(*m*) 1 C. & R. 150.

(*n*) 1 B. 61.

(*o*) 1 B. 21, 79.

Where petitioners and promoters have placed different constructions upon an ambiguously worded clause, the Court of Referees have declined to pronounce upon its legal effect, but, giving the petitioners the benefit of the doubt, have allowed them a *locus standi* to be heard before the Committee (*p*).

### REVISION BY THE HOUSE OF DECISIONS OF REFEREES

In some instances where a *locus standi* against a private bill has been disallowed by the Court of Referees, the petitioners' case has been brought before the House by a motion to instruct the committee on the bill to hear them.

Such a motion was made in 1872 with regard to petitioners (the Corporation of London) against the Thames Embankment, North, Bill, but was negatived on division (*q*). In 1890, on the North British, etc., Railway Companies Bill, an instruction was similarly moved to direct the committee on the bill to hear certain petitioners who had been refused a *locus standi*; and although the motion for an instruction was withdrawn, the case of the petitioners was referred back to the Court of Referees, who reheard it and granted them a *locus standi* (*r*).

### PETITIONERS AGAINST PRIVATE BILLS THAT ARE COMMITTED TO SPECIALLY CONSTITUTED COMMITTEES

Where a private bill is specially committed to a select committee nominated (like the committee on a hybrid bill) partly by the House and partly by the Committee of Selection (see p. 858), the *locus standi* of petitioners against the bill depends upon whatever order as to petitions is made by the House when committing the bill. In some such cases the House has ordered that, "subject to the rules, orders, and proceedings of the House," all petitioners against the bill (*s*), or all the petitioners whose petitions shall have been deposited before a specified time (*t*), should be heard by the committee; or, that such petitioners "as would otherwise have a *locus standi*" (*u*), or "whose *locus standi* may be sustained" (*a*), should be heard; and in these cases the petitioners' *locus standi* is determined by the Court of Referees. But, more commonly, the House has ordered committees of this kind upon a private bill to hear all the petitioners against the bill (*b*), or all petitioners whose petitions shall

(*p*) R. & M. 59; R. & S. 137, 339. Cf. 2 S. & A. 48 (disallowed).

(*q*) C. J. (1872) 159; Parl. Deb. (1872) 210, c. 1808. Cf. also notice of instruction (not moved) on the Maidenhead Bridge Bill, Private Business, 1904, p. 560, and C. J. (1904) 257; Parl. Deb. (1904) 136, c. 92-106, 1060-66.

(*r*) C. J. (1890) 257-58; Parl. Deb. (1890) 343, c. 1181-85. And cf. R. & S. 52-53.

(*s*) C. J. (1895) 53; *ibid.* (1898) 172.

(*t*) C. J. (1899) 96. Cf. also C. J. (1890-91) 331; *ibid.* (1907) 207.

(*u*) C. J. (1893-94) 233; *ibid.* (1899) 83. In both these cases a time before which the petitions had to be presented was specified.

(*a*) C. J. (1882) 166 (all petitions presented during the session); *ibid.* (1893-94) 84 (all petitions presented before a specified time).

(*b*) C. J. (1878) 62; *ibid.* (1881) 466; *ibid.* (1883) 323. In the case of the York (Micklegate Strays) (Recommitted) Bill, the House ordered that the "parties interested" should be heard before the select committee, C. J. (1907) 422.

have been deposited within a specified time (*c*); and in such cases it has been held that the jurisdiction of the Court of Referees is superseded by the order of the House (*d*).

### PRIVATE BILL COMMITTEES INSTRUCTED BY THE HOUSE TO HEAR CERTAIN PETITIONERS

In 1864 permissive instructions were given to an ordinary private bill committee on a group of metropolitan railway bills to allow the promoters of certain competing schemes (which the House had ordered not to be proceeded with in that session) to be heard upon their petitions, if duly deposited against particular bills before the committee (*e*). In 1869 all the metropolitan street tramways bills were considered by one committee, and it was ordered that all petitioners against any of the said bills be heard, without reference to any question of *locus standi* (*f*). In 1905 a mandatory instruction was given, directing the committee on the North East London Railway Bill to hear the promoters of another scheme who had deposited a petition against the bill, and whose *locus standi* was about to be contested before the Referees (*g*). In 1913 the petitions of certain societies against a clause of a private bill and the relative part of the preamble presented five clear days before the meeting of the committee on the bill were ordered to be referred to the committee (*h*), and in 1914 the council of a metropolitan borough were permitted to appear upon the allegations contained in their petition against a bill promoted by two railway companies, while the committee were also instructed that they might determine how far the powers of one of these companies to supply electricity should be limited (*i*).

### PETITION SPECIALLY REFERRED BY HOUSE TO PRIVATE BILL COMMITTEE

On 17 May 1849 a petition from the Attorney-General against a private bill was brought up and read; and it being stated that it was essential to the public interests that it should be referred to the committee on the bill, the standing order requiring all such petitions to be deposited in the Private Bill Office, was read, and suspended, and an instruction given to the committee to entertain the petition (*k*).

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(*c*) All petitions presented during the session: C. J. (1871) 65; *ibid.* (1872) 312; or within the time limited by standing orders: C. J. (1886) 69; *ibid.* (1888) 330; or before a specified time: C. J. (1875) 230; *ibid.* (1909) 104; *ibid.* (1928) 66 (Joint Committee), 148 (Joint Committee); *ibid.* (1928-29) 125, 180 (Joint Committee). An order that has been made, referring to the committee petitions presented before a specified time has subsequently been suspended in favour of particular petitioners, C. J. (1892) 136; *ibid.* (1899) 89, 234, 238.

(*d*) Commercial Gas Bill, 1875, 1 C. & R. 149-50.

(*e*) C. J. (1864) 167, 190.

(*f*) C. J. (1868-69) 63. See also C. J. (1852-53) 572, Suppl. to Votes, 1852-53, p. 999; C. J. (1909) 282; *ibid.* (1910) 210.

(*g*) C. J. (1905) 231. Cf. also the notice of instruction (not moved) on the Weaver Navigation Bill, 1893, Private Business, sess. 1893-94, p. 510; and R. & S. 312.

(*h*) C. J. (1913) 144. See also *ibid.* (1914) 80, 116, 141.

(*i*) C. J. (1914) 93.

(*k*) C. J. (1849) 302.



## CHAPTER XXXIII

# COURSE OF PROCEEDINGS IN THE HOUSE OF COMMONS UPON PRIVATE BILLS; WITH THE RULES, ORDERS, AND PRACTICE APPLICABLE TO EACH STAGE OF SUCH BILLS IN SUCCESSION, AND TO PARTICULAR CLASSES OF BILLS

### GENERAL

The proceedings in the House of Commons upon a private bill will now be followed, step by step, from its first introduction into that House, in the order in which particular rules are to be observed by the parties or enforced by the House or its officers; but this statement of the various forms of procedure may be introduced by a few observations explanatory of the general conduct of private business in the House of Commons.

### GIVING OF NOTICES IN CONNECTION WITH PRIVATE BUSINESS

It has been stated elsewhere that the public business for each day is set down in the order book, either as notices of motions or orders of the day; but the notices in relation to private bills (except those which a Member desires to move in relation to proceedings on a bill in the House) are required to be delivered at the Committee and Private Bill Office, at specified times, by the agents soliciting the bills. These notices will each be described in their proper places; but S.O. 209 applies to all of them alike as well as to deposits—they must be delivered between eleven and five o'clock on any day on which the House sits; and between eleven and one on any day on which the House does not sit; and after any day on which the House has adjourned beyond the following day, no notice may be given for the first day on which it is next to sit.

**If notice not duly given, proceedings void.**—If any stage of a bill be proceeded with when the notice has not been duly given, or the proper interval allowed, or if notice be taken of any other informality, such proceeding will be null and void, and the stage must be repeated (*a*).

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(*a*) C. J. (1845) 423; *ibid.* (1846) 167; *ibid.* (1851) 75; *ibid.* (1852) 157; *ibid.* (1867) 66; *ibid.* (1878) 61; *ibid.* (1884) 57.

**Notices printed in the Votes.**—All notices are open to inspection in the Committee and Private Bill Office; but for the sake of greater publicity and convenience they are also printed with the Votes; and members and parties interested are thus as well acquainted with the private business set down for each sitting, as with the public notices and orders of the day.

## PRIVATE BUSINESS

The time at which matters relating to private bills are considered by the House has already been stated in Chapter XVI. To entitle a motion to be heard at the time of private business, it must relate to a private bill before the House, or strictly to private business in some other form. Motions for the amendment of the standing orders relative to private business, and matters indirectly connected with the private business of the House, are also taken into consideration at the time of private business (*b*).

On 30 April 1895 a proposed amendment to one of the standing orders relative to private business was not permitted to be moved at the time of private business, on the ground that it dealt simply with general questions relating to the conduct of railway companies. Mr. Speaker stated that amendments to these standing orders, if taken at this time, must relate directly to the subject-matter of private bills and not to the general conduct of the companies who promote the bills (*c*). Similarly, a proposed general instruction to all committees on railway bills has not been permitted to be moved at the time of private business, on the ground that the proposed motion raised a question of general policy (*d*).

## CONDUCT OF BILLS BY MEMBERS

The forms and proceedings in the offices of the House, connected with the progress of a bill, are managed by the agent for the bill, and by the officers of the House; but, in the House itself, orders upon a private bill are obtained by a motion made by a member and a question proposed and put, in the usual manner, from the chair; and, except when opposed (see p. 328), motions relating to private bills are subject to the general rules of the House regarding motions (see p. 372).

## PRIVATE BILL REGISTERS (S.O. 192)

Every vote of the House upon a private bill is entered in the Votes and Journals; and, in the Committee and Private Bill Office, registers are also kept, which are open to public inspection daily, and in which all the proceedings, from the petition to the passing of the bill, are recorded. The entries in these registers specify briefly each day's proceedings before the Examiners, or in the House, or in any committee to which the bill may be referred. As every proceeding is entered under the name of the

(*b*) C. J. (1854) 396; *ibid.* (1935-36) 367; *ibid.* (1936-37) 383, etc.; and cf. *infra*, p. 902.

(*c*) Parl. Deb. (1895) 33, c. 116-18.

(*d*) Mr. Speaker's private ruling, 26 March 1895.

particular bill to which it refers, it can be immediately referred to, and the exact state of the bill discovered at a glance.

## I.—PROCEEDINGS FROM PRESENTATION TO COMMITTEE STAGE

After these explanations, the proceedings in the House may be described in the order in which they usually occur.

### PRESENTATION OF BILL (S.O. 163)

In those cases in which, in respect of a petition for a private bill, the Examiner has reported or the Standing Orders Committee have determined that the standing orders have been complied with, the bill itself is presented by being laid on the table of the House (e), not earlier than the first day in February upon which the House sits nor later than one clear day after that date or after the date of the Examiner's report or of the determination of the Standing Orders Committee, whichever is the latest. If the House is not sitting on the latest day allowed for laying the bill on the table, it is to be so laid on the first day on which the House again sits. Where the Examiner has reported that the standing orders have not been complied with or has made a special report under S.O. 79, his report is referred to the Select Committee on Standing Orders; and when this committee have reported that the standing orders ought to be dispensed with, the bill is presented by being laid on the table of the House not earlier than the first day in February on which the House sits nor later than one clear day after the House, acting on the report of the Standing Orders Committee, has given leave to the parties to proceed with the bill. If the House is not sitting on the latest day allowed for laying the bill on the table, it is to be so laid on the first day on which the House again sits.

The order "That leave be given to bring in" a private bill is not now made, but the term *order of leave* is still familiarly used to denote the purposes, comprised within the petition and notices for the bill, for which any such bill provides.

### PRINTING OF PRIVATE BILLS (S.Os. 38, 164)

Every private bill presented to the House must be printed on paper of a size to be determined by the Speaker, with a cover of parchment attached to it, upon which the title is written; the short title of the bill, as first entered in the Votes, must correspond with that at the head of the advertisement. This copy of the bill is called the "House Copy" (S.O. 164).

S.O. 168 provides that "all charges in any way affecting the public revenue, which occur in the clauses of any private bill, shall be printed in italics" (see p. 490). All private bills (except bills certified under S.O. 3) are required by S.O. 38 to be printed, and printed copies must be delivered to the Vote Office for the use of members before the first reading.

(e) By Mr. Speaker's private ruling of October 1945, private bills are presented by the Clerk of the House, and it is no longer necessary for Members to present, or have their names printed on the back of, such bills.

Also, under S.O. 38, in the case of any bill originating in the Commons to which S.O. 64 applies, the title of the bill must contain a reference to the name of any company, society, association, or partnership upon which powers are conferred or whose constitution is altered by the bill (see pp. 897-98).

On 20 February 1846 the solicitor and agent for a bill petitioned for leave to add schedules which had been accidentally omitted from the printed copies of the bill, and the House allowed the parties to make the alteration (f).

#### DEPOSIT OF PRIVATE BILLS (S.O. 165)

On the day previous to the day fixed for their being laid upon the table of the House, the House copies of all private bills must be deposited in the Committee and Private Bill Office; and they are laid on the table of the House by one of the clerks of that office.

#### FINANCIAL MEMORANDUM REQUIRED IN CERTAIN CASES

Under the provisions of S.O.s 169 and 219, every private bill or bill to confirm a provisional order which involves, or in respect of which there has been promised, a grant from any Government department, must, on presentation, have bound with it a printed statement in the form of a Financial Memorandum describing such grant and showing the amount thereof.

This standing order was passed on 13 July 1932 in consequence of a recommendation from the Select Committee on Estimates (g), and, in view of this order, on the recommendation of the Select Committee on Private Bill Standing Orders of 1945, the former Standing Order (numbered 89) with regard to a report from the Chairman of Ways and Means in the case of private bills relating to government contracts was repealed.

#### FIRST READING (S.O. 166)

When "laid on the table of the House" a private bill is deemed to have been read the first time on the day on which it is so laid, and is ordered to be read a second time, and is recorded in the Votes as having been so read and ordered.

**Lords' bills read the first time and referred to the Examiners (S.O. 74).**—All bills brought from the House of Lords (h) are read the first time when received from that House, and are referred to the Examiners, before whom compliance with such standing orders only as have not been previously inquired into has to be proved.

**London County Council (Money) Bill read the first time and referred to the Examiners (S.O. 220).**—The annual money bills introduced under this standing order by the London County Council are referred to the Examiners for proof of the requirements specified in the order.

**Bills referred to the Examiners under S.O. 61 (H.C. and H.L.).**—Whenever any alteration has been made in any work authorized by any

(f) C. J. (1846) 183, 185 (Southport Improvement Bill).

(g) C. J. (1931-32) 300; H. C. 90, (1932) p. xxxii.

(h) For details as to the proceedings on those bills which always originate in the Lords, see Chapter XXXIV.

bill in respect of which a plan and section are required under S.O. 27 to be deposited, during its progress through the House in which it originates, proof has to be given before the Examiner, when the bill reaches the second House, of compliance with certain conditions which are specified in detail in the standing order. These conditions correspond to those with which compliance has to be proved under the preliminary standing orders already mentioned, prior to the introduction of such bills, including notices to, and obtaining consents from, owners, lessees and occupiers of land through which the alteration is to be made (*i*). Compliance with this order is not necessary in the case of alterations made upon a petition for additional provision in the first House.

**Other bills referred to the Examiners after First (or Second) Reading (S.O.s 62-67 (H.C. and H.L.)).**—Under what are known as the “Wharnccliffe” standing orders (*j*) certain bills, conferring particular powers upon companies constituted by Act of Parliament or otherwise, have to be referred, in both Houses, to the Examiners for proof that, as brought into the House, or as amended (or proposed to be amended) on a petition for additional provision, or as brought from the first House, they have been duly approved of by the proprietors or members of the companies concerned, in the manner prescribed in the orders (*k*). Under S.O. 68, in the case of certain bills brought from the first House for the purpose of establishing companies, similar proof is required of the signing by the directors, etc., named in the bill of the petition for, or of a copy of, the bill. The particular provisions of this standing order and of the six “Wharnccliffe” orders, are practically identical in both Houses, and are described here in their House of Commons form. The “Wharnccliffe” orders fall into three pairs, namely, S.Os. 62 and 65, 63 and 66, and 64 and 67, the second order of each pair dealing with the same subject as the first order of the pair when the bill originates in the second House, or when provisions, of a kind specified in the order, have been inserted in that House. In both Houses bills originating in the respective House are referred to the Examiners after second reading.

**Consents of proprietors of statutory companies promoting bills (S.O.s 62 and 65).**—These orders provide that, in the case of a company constituted by Act of Parliament, proof is to be given before the Examiner that the several requirements of the standing order relating to the meeting of proprietors, and the approval by such proprietors holding at least three-fourths of the paid-up capital of the company represented by the votes at the meeting, have been complied with. Provision is also made that, where the company carries on two or more separate undertakings and portions of the capital are allocated so as to be exclusively applicable to the several undertakings, separate meetings of the proprietors of the capital so allocated to separate undertakings shall be held so far as the bill relates to any such separate undertaking.

(*i*) Cf. Committee on South Eastern Railway Bill, 1889.

(*j*) So called from Lord Wharnccliffe who was largely responsible for the original making of an order of this nature by the House of Lords in 1846. The House of Commons first adopted a similar order in 1858.

(*k*) As to the right of proprietors, etc., dissenting under S.Os. 62-68, to be heard before the Examiners, cf. S.O. 76, and *supra*, p. 849.

Both this pair and the following pair of orders contain requirements with regard to notice to be given of meetings (S.O.s 62 and 65 only), the use of proxies, the holding of a poll if demanded, and the recording of proceedings at meetings. Provision is made for the modification of the requirements as regards notice in the case of late bills. Further, while S.O. 62 refers to all such bills originating in the Commons, S.O. 65 refers to

“every bill brought from the House of Lords in which provisions have been inserted in that House, empowering the promoters thereof, being a company constituted by Act of Parliament, to execute, undertake, or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking, or any part thereof, or to enter into any agreements with any other company for the working, maintenance, management, or use of the railway or works of either company, or any part thereof, or to amalgamate their undertaking, or any part thereof, with any other undertaking, or to purchase any other undertaking, or part thereof, or any additional lands, or to abandon their undertaking, or any part thereof, or authorizing or enacting the dissolution of the promoting company, or in which any such provisions originally contained in the bill have been materially altered in that House.”

**Consents of members of registered companies, etc., promoting bills (S.O.s 63 and 66).**—In the case of a bill promoted by any company, society, association, or partnership, whether a company within the meaning of the Companies Act, 1929, or otherwise constituted (and not being a company to which the preceding order applies), proof is to be given before the Examiner in the case of a company within the meaning of the Companies Act, 1929, that the bill has been approved by a special resolution of the company, and in other cases that the bill has been consented to by three-fourths in number and (where applicable) in value of the proprietors or members present and voting at a meeting convened by notice, and similarly by a separate class of proprietors or members as distinct from the proprietors or members generally, so far as the bill relates to such class. While S.O. 63 refers to all such bills originating in the Commons, S.O. 66 refers to

“every bill brought from the House of Lords, in which provisions have been inserted in that House empowering or requiring the promoters thereof, being a company, society, association, or partnership, whether a company within the meaning of the Companies Act, 1929, or otherwise constituted (and not being a company to which the preceding order applies), to do any act not authorized by the memorandum and articles of association, or other instrument constituting or regulating the company, society, association, or partnership, or authorizing or enacting the abandonment of the undertaking, or any part of the undertaking, of such company, society, association, or partnership, or the dissolution thereof, or in which any such provisions originally contained in the bill have been materially altered in that House.” Also, by S.O. 66, where consent, as mentioned in S.O. 63, has been given “subject to such additions, alterations and variations as Parliament may think fit to make therein,” it is not necessary to obtain any further approval or consent in respect of any provisions inserted in the bill in the Lords, unless the committee otherwise decide.

**Consents of members of companies, etc., not being promoters, in the case of certain bills (S.O.s 64 and 67).**—These two orders were

made in 1940 to meet the case of a bill promoted by a company controlling other companies and to provide that meetings should be held to obtain the consent of the proprietors or members of all the companies concerned (*l*). The orders provide that where any bill contains provisions conferring any powers upon, or altering the constitution of any company, society, association or partnership named in the bill but not being the promoters thereof, compliance with S.O.s 62, 63, 65 and 66, as the case may be, shall be proved as though any such company, etc., were the promoters, so far as the aforesaid provisions are concerned; but the orders are not to apply to any bill so far as its provisions are for the protection of the company, etc., or relate to a proposal either for the compulsory acquisition or transfer of the whole or part of the undertaking or assets of the company, etc., by or to the promoters, or for the imposition of any duty or obligation upon, or the limitation of any power of, the company, etc. By S.O. 38 the title of any bill to which S.O. 64 applies must contain a reference to the name of any company, etc., upon which powers are to be conferred or whose constitution is to be altered by the bill; and by S.O. 44 where any such company, etc., carries on an undertaking for the supply of water, gas or electricity, either a printed copy of the bill or notice in writing of its provisions must be delivered or sent to the clerk of the council of each county or district and to the town clerk of each city or borough which comprises the whole or any part of the area within which the company, etc., supply water, gas or electricity.

## SECOND READING

### INTERVAL BETWEEN FIRST AND SECOND READING (S.O. 170)

Between the first reading of a private bill and the day upon which it is first set down for second reading there may not be less than three clear days, nor more than seven, except in the case of a private bill which has been brought from the Lords and has been referred to the Examiners, in which case it may not be first set down for second reading later than seven clear days after the report of the Examiner, or of the Standing Orders Committee.

When the time allowed for the second reading expires during an adjournment of the House, other than an adjournment from Friday to the following Monday, the time is extended to the second day upon which the House sits after the adjournment (S.O. 189).

### NOTICE OF SECOND READING (S.O. 198)

The agent for the bill is required to give not less than three clear days' notice in writing, at the Committee and Private Bill Office, of the day proposed for the second reading, and no such notice may be given until the day after that on which the bill has been ordered to be read a second time. If it should afterwards be discovered that such notice had not been duly

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(*l*) C. J. (1939-40), 249, 250; H. C. Deb. (1939-40), 365, c. 1407-1410.

given, the proceedings upon the second reading will be declared null and void (*m*).

BILL EXAMINED IN COMMITTEE AND PRIVATE BILL OFFICE (S.OS. 196, 197)

Meanwhile the House copy of the bill is in the custody of the Committee and Private Bill Office, where the bill is examined as to its conformity with the rules and standing orders of the House.

#### PROVISIONS IN PRIVATE BILLS, OR PETITIONS FOR ADDITIONAL PROVISION, IMPOSING CHARGES

It has already been explained (see p. 490) that any clauses and provisions, incidentally contained in a public bill, which create a charge on the consolidated fund or on the public revenues or the revenues of India, or which impose a tax on the people, have to be sanctioned by a resolution of a Committee of the whole House, the recommendation of the Crown being signified and the resolution being agreed to by the House. Before the committee on the bill can consider the matter, similar proceedings are necessary with regard to any such provision when contained in a private bill, or proposed, upon a petition for additional provision (*n*), to be inserted in a private bill (*o*). The House resolves to go into committee on a future day, to consider the proposed provision, the King's recommendation being signified, and the matter is considered in the Committee of the whole House on that day; the resolution is then reported and agreed to by the House (*p*). These proceedings, in the case of a private bill, are taken at the time of private business.

In 1882, the East London Railway Bill, after having been considered as amended, was re-committed to a Committee of the whole House, with an instruction to make provision pursuant to the resolution that had been reported from the committee on East London Railway [Repayment of Deposits] and agreed to by the House (*q*).

#### PROVISIONS RELATING TO LAND REVENUES OF THE CROWN

Formerly, where a private bill contained provisions for a payment out of the land revenues of the Crown, the King's Recommendation was

(*m*) North Union Railway (Horwich Branch) Bill, C. J. (1846) 371.

(*n*) National Loan Fund Life Assurance Society (stamp duty on memorials), C. J. (1854-55) 217, 221, 225, 229; Law Life Assurance Society (stamp duty on memorials), *ibid.* (1863) 312, 316, 327, 330; Land Securities Company (stamp duty on mortgage debentures), *ibid.* (1864) 116, 122, 126, 127.

(*o*) H. C. Deb. (1936-37) 322, c. 977.

(*p*) Dundalk and Greenore Railway [cancellation of bond], C. J. (1873) 209, 215, 221; Rhondra Valley and Hirwain Junction Railway [cancellation of bond], *ibid.* (1878) 121, 133, 136, 146; Universal Life Assurance Society [stamp duties], *ibid.* (1900) 122, 124, 127, 140; Great Indian Peninsula Railway Company [annuities], *ibid.* (1900) 238, 242, 248, 255, 300; Liverpool and London and Globe Insurance Company [stamp duties], *ibid.* (1904) 156, 160, 163, 183; Norwich Union Life Insurance Society [stamp duties], *ibid.* (1905) 51, 54, 56, 58, 65, 66; Madras Railway Company (Purchase) [annuities], *ibid.* (1908) 50, 54, 56, 59; Perth County Buildings Order Confirmation [stamp duties], *ibid.* (1927) 356, 358, 361; Heriot-Watt College, etc., Confirmation [stamp duties], *ibid.* (1927) 364, 366, 368; Birmingham Corporation (General Powers) [money], *ibid.* (1929-30) 74, 76, 77 (relating to teachers' superannuation); London County Council (General Powers) [money], *ibid.* (1936-37) 207, 209, 212 (relating to the provision of an hotel for instructional purposes); Lee Conservancy Catchment Board [money], *ibid.* (1937-38) 247, 250, 252 (grants for purposes of drainage).

(*q*) C. J. (1882) 242, 254.



required to a resolution of a Committee of the whole House authorizing the payment. But since the passing of the Crown Lands Acts in 1866, 1894, and 1927, the Commissioners of Crown Lands have statutory authority to deal with cases of this kind, and no money resolution would be necessary (r).

#### PEERS AND CHARGES UPON THE PEOPLE IN PRIVATE BILLS

The House of Commons will not allow peers to be concerned in the levy of any charge upon the people ; but a considerable change in modern practice has resulted from the operation of S.O. 191, relaxing the privileges of the Commons in regard to clauses referring to tolls and charges for services performed, not being in the nature of a tax. By Mr. Speaker's order of 15 February 1859,

“ The clerks in the Private Bill Office are particularly directed to take care that in the examination of all private bills levying any rates, tolls, or duties on the subject, peers of Parliament, peers of Scotland, or peers of Ireland, are not to be inserted therein, either as trustees, commissioners, or directors of any company, except where such rates, tolls, or duties are made or imposed for services performed, and are not in the nature of a tax.”

#### BILLS WITHDRAWN AND BILLS INTRODUCED IN LIEU OF BILLS

WITHDRAWN (S.OS. 74, 75, 195, 214)

If the bill be improperly drawn, the order for the second reading is discharged and the bill is withdrawn. If, when a bill is withdrawn, leave is given to present another (s), the bill so presented is distinguished from the first bill by being numbered (2), and, having been read the first time, is referred to the Examiners. Not less than two clear days' notice is given of the examination, and memorials may be deposited before twelve o'clock, on the day preceding that appointed. The Examiner inquires whether the standing orders, which have been already proved in respect of the first bill, have equally been complied with in respect of the bill No. 2, and reports accordingly to the House ; when the bill proceeds in the ordinary course.

In 1845, Mr. Speaker called the attention of the House to a bill (Midland Railway Branches Bill), which contained a clause, giving compulsory power to take lands, of which no notice had been given, and without the proper plans, sections, and estimates having been deposited according to the standing orders. The order for the second reading was discharged, and the bill referred to the committee on petitions for private bills (the predecessors of the Examiners). This committee found that the standing orders had not been complied with ; and they were thereupon instructed to inquire by whom, and under what circumstances, the violation of the standing orders had been committed. Their report upon this point was referred to the Standing Orders

(r) For examples of the old form of procedure, see C. J. (1850) 369, 423 ; *ibid.* (1856) 241, 247, 254, 256, 260, 265, 266.

(s) C. J. (1837) 425, 432 ; *ibid.* (1844) 187-88 ; *ibid.* (1850) 40 ; *ibid.* (1851) 209 ; *ibid.* (1852-53) 289 ; *ibid.* (1881) 153, 166.

Committee, who determined that the standing orders ought not to be dispensed with ; and the bill was not proceeded with (*i*).

#### DEBATE ON SECOND READING

The second reading of a private bill corresponds with the same stage in other bills, and in agreeing to it the House affirms the general principle, or expediency, of the measure. There is, however, a distinction between the second reading of a public and of a private bill, which should not be overlooked. A public bill being founded on reasons of state policy, the House, in agreeing to its second reading, accepts and affirms those reasons ; but the expediency of a private bill, being mainly founded upon allegations of fact, which have not yet been proved, the House, in agreeing to its second reading, affirms the principle of the bill conditionally, and subject to the proof of such allegations before the committee. Where, irrespective of such facts, the principle is objectionable, the House will not consent to the second reading ; but otherwise, the expediency of the measure is usually left for the consideration of the committee (*ii*). This is the first occasion on which the bill is brought before the House otherwise than *pro forma*, or in connection with the standing orders ; and if the bill be opposed, upon its principle, it is the proper time for attempting its defeat. If the second reading be deferred for three or six months, or if a reasoned amendment be carried (see p. 498), or if the bill be rejected, no new bill for the same object can be offered until the next session (see p. 491).

**Limitation of scope of debate on Second Reading.**—The following examples illustrate matters which Members, who are opposing the second reading of a private bill, have been debarred from raising as reasons for its rejection.

On the second reading of the Liverpool and London and Globe Insurance Company Bill, 1904, the Speaker ruled that a Member could not move an amendment that would raise the general policy and the state of the general law as to alterations of the articles of association of insurance companies, but that he might have an opportunity of arguing against the bill on those lines (*a*).

In the case of the London and North Western Railway Bill, 1896, it was ruled that it was inadmissible to go into the general conduct of a railway company, or to raise a general discussion on the passenger traffic and charges over their whole line, upon the second reading of a bill which affected the exceptional rates charged on one particular section (*b*).

On the second reading of the Fishguard and Rosslare Railways and Harbours Bill, 1913, it was ruled that it was inadmissible to discuss the action of a company which was only a subscriber to the undertaking authorized by the bill (*c*).

On the second reading of the Lancashire and Yorkshire Railway Bill, 1913, the Speaker ruled that regulations put into force by the company in common

(*i*) C. J. (1845) 169, 219, 247, 262, 385, 419.

(*ii*) Cf. also Minutes of Committee on Mersey Conservancy and Docks Bill, 1857 ; and Parl. Deb. (1857) 147, c. 133.

(*a*) Parl. Deb. (1904) 133, c. 1259.

(*b*) Parl. Deb. (1896) 39, c. 857-62. Cf. also Parl. Deb. (1891) 352, c. 1021-24 ; *ibid.* (1901) 96, c. 43 ; *ibid.* (1903) 121, c. 73.

(*c*) H. C. Deb. (1913) 51, c. 1458.

with other companies could not be discussed on that particular bill, but should be dealt with by a general bill (*d*).

In the case of the Caledonian Railway Bill, 1923, the Speaker would not permit the failure of the company to provide third-class sleeping carriages to be discussed on the second reading of the bill (*e*).

On the second reading of the London County Council (Money) Bill, 1927, the Speaker declined to allow discussion of the alleged grievances of certain temporary employees who were performing work of a permanent character (*f*).

In the case of the London Passenger Transport Board Bill, 1938, the Speaker ruled privately that the constitution of the Board and its representation in the House were not matters which could be discussed on the second reading of a private bill, but could only be raised on a public bill.

#### DEFERMENT OF STAGES, ETC., OF PRIVATE BILL, IF OPPOSED

If the second or third reading of a bill, or the consideration of a bill as amended, or any proposed clause or amendment, or any motion relating to a bill be opposed, its consideration is deferred in accordance with the provisions of S.O. 174, till some future day at the time at which private business is usually taken or till half-past seven o'clock on any day other than a Friday which the Chairman of Ways and Means may determine. The order of opposed private business set down for half-past seven is arranged by the Chairman of Ways and Means; and when such business has been by direction of the Chairman of Ways and Means, the direction includes the setting down of any motion contingent directly or otherwise thereon.

#### STAGES TAKEN BY MISTAKE

When a bill has been read a second time by mistake the order then made "That the bill be now read a second time" has been discharged on a later day, and another day appointed for the second reading (*g*), or the bill has been referred back to the Examiners (*h*). In similar circumstances the proceedings on consideration of a bill have been declared null and void, and another day has been appointed for its consideration (*i*).

#### COMMITTAL (S.Os. 109, 176)

Every private bill, after being read a second time and committed, stands referred to the Committee of Selection, whose duties in this connection are described fully on pp. 912-14, below. A bill which is referred to the Examiners after second reading is not committed, however, until the Examiners have reported compliance with any standing orders not previously inquired into (*k*), or, if the standing orders have not been complied with, the Select Committee on Standing Orders have resolved that such

(*d*) H. C. Deb. (1913) 52, c. 654-55. Cf. *ibid.* (1938) 332, c. 647-8.

(*e*) H. C. Deb. (1923) 163, c. 1288.

(*f*) H. C. Deb. (1927) 206, c. 1974. Cf. H. C. Deb. (1929) 226, c. 2343-44; *ibid.* (1935-36) 308, c. 1806-8; *ibid.* (1937-38) 332, c. 648; *ibid.* 334, c. 268; *ibid.* (1940-41) 367, c. 997; *ibid.* (1943-44) 402, c. 1176-7.

(*g*) C. J. (1872) 135; *ibid.* (1884) 57.

(*h*) C. J. (1875) 72; *ibid.* (1878) 61.

(*i*) C. J. (1912-13) 186; *ibid.* (1927) 270.

(*k*) C. J. (1913) 36; *ibid.* (1937-38) 154.

standing orders should be dispensed with, and the House has agreed to this resolution (*l*). Cases in which there is a departure from the ordinary procedure in the committal of a private bill are dealt with on p. 948.

## INSTRUCTIONS

### TIME FOR MOVING INSTRUCTIONS

After a bill has been read a second time and committed, an Instruction may be given by the House, if it think fit, for the guidance of the committee on the bill. An Instruction is moved immediately after the bill has been committed, and, if opposed, its consideration is postponed to a time determined by the Chairman of Ways and Means (see above) (*m*). An Instruction may be moved as a contingent motion, in accordance with the provisions of S.O. 174, after an opposed bill set down for consideration at half-past seven o'clock has been read a second time (see p. 902).

In the case of a bill, which is referred to the Examiners after its second reading, an Instruction is moved not "to the committee on the bill," but "to the committee to which the bill may be committed" (*n*), since compliance with the further standing orders must be proved or the standing orders must be dispensed with, before the bill can be committed.

If a bill has been reported, and is subsequently recommitted, an Instruction may similarly be given to the committee on the recommitted bill (*o*).

### PRINCIPLES OF INSTRUCTIONS TO PRIVATE BILL COMMITTEES

The origin of Instructions and the principles which underlie their proposal in connection with public bills have been fully described in Chapter XX.

In considering how far these principles may relate to Instructions in respect of private bills, four important distinctions must be observed. First, S.O. No. 34 (Public), which gives a general power to committees to make such amendments in bills as they think fit, provided they be relevant to the subject-matter of the bill, does not apply to committees on private bills. Secondly, the process of petitioning for an additional provision provides machinery for the incorporation in a private bill of amendments which would otherwise be outside the order of leave (*i.e.* the bill and the notices); whereas, in a public bill, it is impossible for a committee to make amendments which go beyond the scope of those contemplated by S.O. No. 34 (Public), unless an express Instruction has been given by the House. Thirdly, S.O. 175, passed in 1936, which is described in detail below, prevents the moving of Instructions, when they seek to authorize amendments which could normally only be made by means of an additional provision. Fourthly, while an Instruction to a Committee of the whole House or to a standing or joint committee can

(*l*) C. J. (1914-16) 73; *ibid.* (1928-29) 140.

(*m*) See also the Speaker's ruling in the case of an Instruction on the Derby Corporation Bill, H. C. Deb. (1929) 225, c. 514, 1724-26.

(*n*) C. J. (1914) 93.

(*o*) C. J. (1921) 342.

only be moved in a permissive form, an Instruction to a private bill committee may be mandatory or permissive. A mandatory Instruction defines the course of action which a committee must follow and leaves them no option in the exercise of their functions with regard to the particular matter which is the subject of the Instruction. Though for that reason mandatory Instructions have sometimes been deprecated (*p*), they are frequently proposed and given to committees. A permissive Instruction confers on a committee powers to consider matters relative to the subject-matter of the bill, which would not otherwise be within their competence, or would not come within the ordinary scope of their inquiry. An amendment to alter the form of a permissive instruction standing on the notice paper into a mandatory instruction cannot be proposed without notice (*q*).

#### POWER OF COMMITTEE TO MAKE AMENDMENTS

A committee on a private bill is bound by the order of leave and is precluded from admitting provisions which are outside that order. It is within their competence, however, to make amendments in the bill which are within the order of leave, though such amendments, necessarily, must not enlarge the powers sought by the bill. One of the chief effects of this rule is to prevent the insertion by a committee of provisions affecting the property and interests of persons who, had such provisions been included in the original bill, would have been entitled to notice under the standing orders, and thus have been afforded an opportunity of objecting. Where, after the introduction of a bill, the promoters desire to insert such provisions, they are required to proceed by petition for additional provision, and opponents, therefore, are given adequate opportunity of voicing their objections.

#### S.O. 175 AND ITS EFFECT ON INSTRUCTIONS

Instances have occurred in the past where attempts have been made, by means of an Instruction, to require or empower a committee to insert provisions which might affect the property and interests of outside parties, although they would not have received the protection to which they are entitled under the standing orders. This practice has been deprecated, firstly, because it is an evasion, if not of the letter, at least of the spirit of the standing orders, and secondly, because if amendments outside the order of leave are inserted in committee, in pursuance of an Instruction, there is still a probability that, when the bill reaches the other House, non-compliance with the standing orders may be found, and the amendments may be rejected on those grounds; and for this reason, on more than one occasion, an Instruction has been ruled out of order. An Instruction of this nature, whether mandatory or permissive, has now been definitely prohibited by S.O. 175, passed on 17 December 1936, which in its present form states :

(*p*) Parl. Deb. (1894) 25, c. 1067-68; *ibid* (1900) 80, c. 180, 195, H. C. 378, pp. v and vii, Qns. 42-67, 1137 (1902).

(*q*) Parl. Deb. (1890-91) 350, c. 1825.

"Where it is sought by a proposed Instruction to authorise or require a committee on a private bill to make an amendment in the bill, Mr. Speaker, if he is of the opinion that the amendment is such that it could not have been proposed by the promoters otherwise than by a petition for additional provision, shall decline to propose the question on the Instruction to the House" (r).

It will be seen that the effect of this new standing order is far-reaching, and many Instructions to private bill committees, which have been allowed in the past, would now be regarded as contravening the standing order and so be inadmissible. Broadly speaking, therefore, no Instruction can be moved to a committee on a private bill, seeking to introduce amendments which enlarge the powers sought by the bill, or raising questions of general policy (s). Subject to this overriding standing order the question whether an Instruction is or is not in order depends on principles deduced from the rulings of the Chair which are examined in detail below and differs according to whether the Instruction is mandatory or permissive.

#### MANDATORY INSTRUCTIONS

Mandatory Instructions to committees on private bills may be divided into three categories :

(1) Instructions directing the committee to insert definite provisions in a bill or to require safeguards or security before passing certain provisions, or directing the taking of certain evidence.

- (a) In 1893, the committee on the Weaver Navigation Bill were instructed to insert a clause requiring the trustees to come to Parliament within two years with such a bill as would enable Parliament to deal with the whole question of the Trust (t).
- (b) In 1918 the committee on the Londonderry Corporation Bill were instructed to insert a clause in the bill limiting the borrowing powers of the corporation for certain purposes to a specified sum, until they had taken the necessary steps to introduce within the next two sessions of Parliament a bill for the extension of the city boundaries (u).
- (c) An Instruction was given to the committee on the London County Council (Charing Cross Bridge) Bill, 1929, to insert clauses or obtain an undertaking from the promoters to secure by competition, or otherwise, designs for the bridge and for the architectural treatment of the viaducts (a).
- (d) In 1902 the committee by whom the London United Electric Railways Bill and the Piccadilly, City, and North-East London Railway Bill were considered, were instructed to take security, in each case, from the undertakers for the completion of the whole scheme of railways comprised in each bill (b). In the former case the bill was withdrawn while before the committee (c); and, in the latter, the

(r) C. J. (1936-37) 66; H. C. Deb. (1936) 318, c. 2591.

(s) H. C. Deb. (1929) 226, c. 355.

(t) C. J. (1893-94) 339.

(u) C. J. (1918) 23.

(a) C. J. (1929-30) 201.

(b) C. J. (1902) 361.

(c) C. J. (1902) 443.

committee made a special report stating that the conditions imposed by the Instruction of the House could consequently not be complied with, and that the preamble could not therefore be proved (*d*).

- (*e*) In 1896 an Instruction was given to the committee on the London County Council (Vauxhall Bridge Tramways) Bill to take the evidence of the police upon the question of traffic (*e*).
- (*f*) In 1888 an Instruction was given to the committee on the Brixton Park Bill, to provide that the purchase of the park should not be made till the opinion of the ratepayers of Lambeth had been taken on the desirability of the purchase (*f*).
- (*g*) An Instruction was moved directing the committee on the West Yorkshire Gas Distribution Bill (Lords), 1938, to provide for the further and better protection of highway authorities in respect of the laying of gas pipes and mains, and requiring the approval of the local authority to the site selected for the erection of a gas holder so that due regard should be had to amenities and air-raid precautions; but after debate the motion was withdrawn (*g*).

Other matters which have been the subject of mandatory Instructions are superannuation and provident funds (*h*), workmen's trains and fares (*i*), amount of charge in excess of authorized fares and workmen's fares (*k*), assimilation of fares on new railways to those on existing lines (*l*), erection of trolley vehicle equipment (*m*), and the payment by the promoters of certain costs to an individual (*n*). An Instruction has also been given to a committee to secure a hearing for persons who might not otherwise be entitled to give evidence (*o*).

(2) Instructions directing the committee to omit definite provisions from a bill.

Instructions to this effect were given to the committee on the London County Council Bill, 1890 (*p*), the Wolverhampton Corporation Bill, 1891 (*q*), the Colne Corporation Bill, and other bills in 1905 (*r*), the Mersey Railway Bill, 1906 (*s*), the Manchester Corporation (General Powers) (recommitted) Bill, 1921 (*t*), the Sunderland Corporation and the London County Council (Money) Bills, 1935 (*u*). Other similar instructions have been given to strike out clauses relative to milk supply other than model clauses (*a*), and to strike out provisions increasing any statutory maximum price of gas or modifying existing statutory provisions as to the relation of price to dividend (*b*).

(*d*) C. J. (1902) 447; Parl. Deb. (1902) 113, c. 1142, etc.

(*e*) C. J. (1896) 68.

(*f*) C. J. (1888) 105. Cf. also C. J. (1888) 166.

(*g*) C. J. (1937-38) 344; H. C. Deb. (1938) 338, c. 683-714.

(*h*) C. J. (1900) 284; *ibid.* (1901) 76, 90, 257, 278; *ibid.* (1902) 82; *ibid.* (1904) 250.

(*i*) C. J. (1902) 324, 360.

(*k*) C. J. (1920) 87.

(*l*) C. J. (1923) 34.

(*m*) C. J. (1922) 89.

(*n*) C. J. (1904) 257; Parl. Deb. (1904) 136, c. 1060.

(*o*) C. J. (1922) 50 (Provisional Order Bill).

(*p*) C. J. (1890) 194.

(*q*) C. J. (1890-91) 94.

(*r*) C. J. (1905) 54, 60, 68, 69.

(*s*) C. J. (1906) 186.

(*t*) C. J. (1921) 342.

(*u*) C. J. (1934-35) 139, 234.

(*a*) C. J. (1908) 80.

(*b*) C. J. (1918) 136, 176, 186.

S.O. 175 would prevent the moving of such an Instruction if the provision to be struck out were one limiting the powers of the promoters.

(3) Instructions directing the committee to inquire into and, in certain cases, to report upon matters which in the opinion of the House are relevant to the bill, or can be suitably investigated in connection therewith.

(a) Instructions were given in 1866 to the committee on the London (City) Corporation Gas Bill to inquire into the Metropolis Gas Act, 1860 (c), and, in 1867, to the committee on the East London Water (Thames Supply) Bill to inquire into the Metropolis Water Act, 1852 (d).

(b) Instructions were given to the committees on the Southend-on-Sea Corporation Bill, 1926 (e), the Buxton Corporation Bill, 1927 (f), the Bognor Urban District Council Bill, 1928 (g), and the Chester Corporation Bill, 1929 (h), to have regard to Section 56 of the Public Health Act, 1925, in their consideration of a particular provision of the bill.

(c) The committees on the Belfast Water Bill and the Sheffield Corporation Bill, 1912, were instructed to take into consideration S.O. 184a (now 198), as if the bill authorized the construction of works (i).

(d) In 1896 the committee on the City and South London Railway Bill were instructed to consider whether any, and, if any, what provisions could reasonably be made for the preservation of the Church of St. Mary Woolnoth without preventing the construction of the railway (k).

(e) In 1920 a committee was instructed in the case of two water bills to consider the desirability in the public interest of joint utilization and control of certain sources of water supply by the promoters of the bills and an existing water company (l).

(f) In 1884 an Instruction was moved to direct the committee on the Dublin, Wicklow, and Wexford Railway Bill to inquire and report whether the proposed railway would injuriously affect an open space in Dublin, and on its being objected that the committee already possessed the powers to be conferred by the Instruction, the Speaker said that the Instruction, being mandatory, was perfectly in order (m).

(g) In 1884 an Instruction was given to the committee on the Ennerdale Railway Bill, to inquire and report whether the proposed railway would interfere with the enjoyment of the public, and of visitors to the lake district, by injuriously affecting the scenery (n).

(h) The committee on the Adelphi Estate Bill, 1933, were instructed to consider the effect of the bill on the architectural and artistic aspect and other amenities of the river front, to hear such evidence as they thought fit, and to provide that drawings of any new building should

(c) C. J. (1866) 136.

(d) C. J. (1867) 65.

(e) C. J. (1926) 257.

(f) C. J. (1927) 44.

(g) C. J. (1928) 33.

(h) C. J. (1928-29) 109.

(i) C. J. (1912-13) 46.

(k) C. J. (1896) 169.

(l) C. J. (1920) 250.

(m) C. J. (1884) 190; Parl. Deb. (1884) 287, c. 875; cf. also C. J. (1896) 55, 174; *ibid.* (1899) 185; *ibid.* (1902) 366; *ibid.* (1913) 143, 208.

(n) C. J. (1884) 70; cf. also C. J. (1897) 224; Parl. Deb. (1897) 49, c. 339-53.



be approved by the Royal Fine Art Commission or other suitable body (*o*).

#### PERMISSIVE INSTRUCTIONS

A permissive Instruction has been moved frequently in the past, empowering the committee to introduce amendments cognate to the general purposes of the bill; but in view of the restrictions imposed by S.O. 175, it is not easy to see how an Instruction of this kind could be framed so as to be in order. It may be broadly said, therefore, that permissive Instructions are now confined to those empowering the committee to inquire into matters which are relevant to the subject-matter of the bill, or which can be suitably investigated in connection therewith.

- (a) In 1879 an Instruction was given to the committee on the Liverpool Lighting Bill (promoted by the corporation) empowering them to inquire and report as to the conditions under which lighting by electricity should be sanctioned by Parliament in the case of local authorities or public companies (*p*).
- (b) In 1878 an Instruction was given to the committee on the Manchester Corporation Water Bill, empowering them to consider the requirements of the populations between Manchester and the Lake District, whence was to come the proposed supply (*q*).
- (c) In 1892, the committee on the Birmingham Corporation Water Bill received an Instruction empowering them to inquire and report whether it was necessary to extinguish the rights of commoners and others over the large district proposed to be taken for the collection of the water to be supplied under the bill. Exception was taken to the Instruction, as being unnecessary, but was overruled by the Speaker (*r*).
- (d) In 1909, 1910, and 1911 Instructions were given to the committees on various water bills empowering them to inquire whether adequate provision was made by the bill for the supply of water at reasonable rates to the agricultural community and to any persons whose existing supply might be affected by the proposed works, and to insert clauses compelling the promoters to provide such supply (*s*).
- (e) In 1894 an Instruction was given to the committee on the Furness Railway Bill, empowering them to inquire whether it was expedient to abolish certain dues (*t*).
- (f) In 1902 the committee on the North Metropolitan Tramways Bill were empowered to inquire, if they saw fit, as to the company's existing night service of cars. An amendment proposed with the object of making this Instruction mandatory instead of permissive was negatived (*u*).

#### INADMISSIBLE INSTRUCTIONS

The restriction placed upon the moving of Instructions by S.O. 175 has already been observed but, even in cases to which that standing order

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- (o) C. J. (1932-33) 282; cf. also C. J. (1911) 277.
  - (p) C. J. (1878-79) 87, and for later proceedings in this case, *ibid.* 112, 124, 314.
  - (q) C. J. (1878) 68; cf. also C. J. (1919) 67.
  - (r) C. J. (1892) 97; Parl. Deb. (1892) 2, c. 626.
  - (s) C. J. (1909) 67, 75, 76; *ibid.* (1910) 52, 66, 89, 144; *ibid.* (1911) 140, 164. See also C. J. (1914) 99.
  - (t) C. J. (1894) 74.
  - (u) C. J. (1902) 131; Parl. Deb. (1902) 105, c. 972-74.

does not apply, there are frequently other grounds upon which an Instruction may be disallowed.

(1) An Instruction is out of order, if it seeks to traverse the decision of the House in rejecting a reasoned amendment on the second reading of the bill.

An Instruction was put down to the London and North Western Railway (Steam Vessels) Bill, 1898, which proposed that the powers given to the company should remain in force for fourteen years. The Speaker ruled that the Instruction raised again the precise question which had been raised by an amendment to the second reading of the bill, proposing that the powers should not be permanent. The House having debated and decided against that amendment, the question could not be raised again (a).

(2) An Instruction is unnecessary and out of order if it proposes to confer powers which the committee are already able to exercise.

An Instruction was put down to the London and North Western Railway (Steam Vessels) Bill, 1898, which was to give permanent powers to the railway company with regard to traffic between Holyhead and Ireland, empowering the committee to regulate the traffic on the Holyhead and Chester line in connection with the steamship traffic. The Speaker ruled that this was a matter within the power of the committee, and that the Instruction was not needed and was, therefore, out of order (b).

(3) An Instruction is out of order, if the objects which it proposes are clearly of an impractical kind, or if its terms are too vague to afford definite directions to the committee.

(a) On 3 May 1898, an Instruction offered to the Fishguard and Rosslare Railway Bill, by which it was proposed to direct the committee to insert such clauses as would secure the commercial interests of the city and port of Cork, etc., was privately ruled out of order on the ground that it was too vague and gave no definite instruction to the committee.

(b) On 31 March 1903, by a private ruling, the Speaker also disallowed, upon the same ground, an Instruction by which it was proposed to direct the committee on the Midland and Belfast and Northern Counties Railways Bill, to inquire and report whether, in the absence of provisions as to a proper steamship service and as to rates and fares, the bill would affect the trade and commerce of Londonderry, without compensating advantages (c).

(4) An Instruction is out of order if it imposes an unreasonable restriction on the discretion of the committee.

(a) A mandatory Instruction was ruled out of order in 1909 on the ground that it dictated to a committee the express terms of a clause to be inserted in the bill before the committee had had an opportunity of considering the bill (d).

(b) In 1909, several mandatory Instructions, directing the committees on certain water and railway bills to insert in the bills clauses which were set out in the Instructions, were removed from the paper in

(a) Parl. Deb. (1898) 56, c. 1514; cf. also Parl. Deb. (1901) 90, c. 1536.

(b) Parl. Deb. (1898) 56, c. 1514; cf. also Parl. Deb. (1894) 26, c. 116; *ibid.* (1899) 68, c. 940. In the last case the Instruction was moved and withdrawn.

(c) Private Business, 1903, p. 207; cf. also Parl. Deb. (1902) 111, c. 442.

(d) H. C. Deb. (1909) 4, c. 1300; cf. also H. C. Deb. (1929) 225, c. 2087.

accordance with private rulings of the Speaker (*e*). In the case of the water bills, a permissive Instruction was moved in general terms (*f*).

- (*c*) In 1901, an Instruction, of which notice had been given, on the Great Eastern Railway Bill, was ruled out of order by the Speaker, who said that it proposed to give a mandatory direction to the committee to set aside the form of a clause prescribed by standing order with regard to houses of the working classes, and that such a course would be an abuse of the use of Instructions (*g*).

(5) An Instruction is out of order, if it deals with a question of public policy, which, regard being had to the object and purposes of a private bill, should more properly be the subject of a public bill.

- (*a*) In 1892 the Eastbourne Improvement Act (1885) Amendment Bill was introduced to repeal a section, for the prohibition of processions on Sunday, which had been secured by the corporation of Eastbourne in their Act of 1885; and notice was given of a mandatory Instruction to the committee on the bill to insert further clauses, exempting Eastbourne from the operation of the provision contained in the Roman Catholic Relief Act of 1829, under which Roman Catholic ecclesiastics were practically prohibited from participating in processions. The Speaker stated that the proposed clauses could not be engrafted on the private bill before the House; and that it would be out of order by an Instruction on the bill in question to seek the repeal, in the instance of a particular town, of provisions contained in the general law and passed in the interests of public policy (*h*).

- (*b*) On 8 March 1892 notice was given of an Instruction to the committee on the South Eastern Railway Bill, to inquire into and report on the accommodation, etc., supplied to third-class passengers on the railway. The Speaker privately informed the Member in whose name it stood that the Instruction was not in order, on the ground that the remedy (if legislation were needed) should be sought in a general statute applicable to all railways alike; that this would be a matter of general policy to be considered at the time, not of private, but of public business; and that it would be contrary to the practice of the House to single out the bill of a particular company and impose on it alone conditions applicable to railways generally.

- (*c*) On 3 March 1898, notice having been given of an Instruction to direct the committee on the Great Northern Railway Bill to provide for an increased number of workmen's trains (to which there was no reference in the bill), the Speaker intimated to the member who had given notice of the motion that the question was one of general policy affecting all railways, and that there being nothing in the bill to which it was germane, the proposed Instruction could not be moved.

- (*d*) On 26 March 1895 the Speaker ruled privately that a proposed motion for a general Instruction to every committee on any railway bill directing them to inquire and report whether the Board of Trade had any complaint regarding the promoting company in respect of the Railway Regulation (Servants' Hours) Act, 1893, or of the

(*e*) Private Business, 1909, pp. 138-39, 174-75, 228

(*f*) C. J. (1909) 67.

(*g*) Parl. Deb. (1901) 91, c. 54.

(*h*) Parl. Deb. (1892) 2, c. 627

conciliation powers under the Railway and Canal Traffic Acts, raised a question of general policy and ought not to be brought on at the time of private business (i).

- (e) In 1923, an Instruction on the London, Midland and Scottish Railway Bill to insert a clause to repeal a statutory provision requiring a certain level crossing to be kept closed for road traffic was ruled out of order as repealing part of a public act, viz. the Regulation of Railways Act, 1842 (k).

#### INSTRUCTIONS TO DIVIDE BILLS

An Instruction is necessary and may be given to divide a bill into two or more bills (l).

- (a) In 1915, in order that the unopposed portions of the bill might proceed as a separate bill, the London County Council (General Powers) (suspended) Bill was recommitted to the Local Legislation Committee with an Instruction to divide it into two bills and to report the bills, without amendments, except such as were consequential upon the division (m).
- (b) In 1910, in the case of certain bills each of which was promoted by and dealt with several gas companies for a common purpose, objection was taken to the difficulty imposed by this method of procedure upon opponents who were necessarily interested in the proposals of only one company. To meet this objection the committee were instructed to consider on the request of any petitioners the expediency of dividing the bills, and in the case of one bill to hear separately the case of the promoters (n).

#### GROUPING OF BILLS AND NOMINATION OF COMMITTEES

It has already been stated that every private bill, after being read a second time and committed, stands referred under the terms of S.O. 109 to the Committee of Selection, whose constitution and general functions have been described on p. 857. A more detailed account must now be given of the allocation of bills amongst committees, commonly known as grouping, and the nomination of members selected to serve on private bill committees.

#### COMMITTEE ON UNOPPOSED BILLS (S.O. 132)

Every unopposed bill is referred by the Committee of Selection to the Committee on Unopposed Bills, which consists of five members, viz. the Chairman of Ways and Means (who when present is *ex officio* chairman), the Deputy Chairman, and three members, who are selected from time to time, by the Chairman of Ways and Means, from a panel appointed by the Committee of Selection at the commencement of every Session. The committee have the assistance of the counsel to Mr. Speaker. The quorum of the committee is three.

(i) For other similar rulings on Instructions, see Parl. Deb. (1894) 26, c. 561; *ibid.* (1896) 39, c. 1707; *ibid.* (1901) 91, c. 55; *ibid.* (1901) 97, c. 1312-13; *ibid.* (1929) 226, c. 355.

(k) H. C. Deb. (1923) 165, c. 811.

(l) C. J. (1872) 165.

(m) C. J. (1914-16) 180-81; H. C. Deb. (1915) 73, c. 2.

(n) C. J. (1910) 192, 193, 242; H. C. Deb. (1910) 18, c. 575, 597.

If at any time the Chairman of Ways and Means is of opinion that, in order to expedite the progress of bills referred to the Committee on Unopposed Bills, the adoption of such a course is desirable, he may apportion the bills between two such committees, each having the composition, quorum and other attributes described above. Where such a course is adopted the Committee of Selection has power to appoint additional members to the panel.

The Chairman of Ways and Means has power to select from the panel one member to act as chairman of the committee at every sitting at which neither he nor the Deputy Chairman is present (o).

PROCEEDINGS OF, AND IN RELATION TO, THE COMMITTEE OF SELECTION  
(S.OS. 109, 119 )

The Committee of Selection must treat as an opposed bill every bill against which a petition has been presented and has not been withdrawn, or as respects which the Chairman of Ways and Means informs the House, in accordance with S.O. 85, that the bill, though unopposed, ought to be treated as opposed (see p. 919). In the latter case, under S.O. 112, the bill again stands referred to the Committee of Selection.

GROUPING OF OPPOSED BILLS (S.OS. 111-114)

The Committee of Selection form into groups such bills as may be conveniently submitted to one and the same committee, fixes the time of the first sitting of such committee (subject to the provisions of S.O. 177 as to the interval between the committal of a bill and its consideration by a committee) and name the bill or bills which shall be taken into consideration on the first day of the meeting of the committee on any group of bills. The committee may also remove a bill from a group or transfer a bill from one group to another.

**Committees on opposed bills (S.O. 119).**—The committee on every opposed private bill, or group of such bills, consists of a chairman and three members not locally or otherwise interested in the bill or bills referred to them, appointed by the Committee of Selection. In the case of opposed bills containing local legislation clauses the committee to whom the bill is referred has the assistance of the Speaker's counsel (S.O.123) (p).

**Members of committees on opposed bills to sign declaration (S.O. 120).**—Each member of a committee on a group of opposed private bills, before he is entitled to attend and vote, is required to sign a declaration that his constituents have no local interest, and that he has no personal interest, in any bill included in the group, and that in the event of any bill being added to the group in which he or his constituents have any such interest, he will disclose the fact and that he will never vote on any question which may arise without having duly heard and attended

(o) See the sessional order of 16 December 1937, C. J. (1937-38) 69; H. C. Deb. (1937) 330, c. 1309-11; also sessional order of 5 December 1938, C. J. (1938-39) 37. The provisions of these sessional orders were incorporated in S.O. 132 in 1945. Up to the present it has not been found necessary to duplicate the Committee on Unopposed Bills.

(p) This provision was first made by the sessional order of 16 December 1937, C. J. (1937-38) 69; H. C. Deb. (1937) 330, c. 1309-11.

to the evidence relating thereto. If a member who has signed this declaration should subsequently discover that he has a direct pecuniary interest in a bill, or in a company who are petitioners against a bill, he will state the fact to the committee, and will be discharged by the House, or by the Committee of Selection, from further attendance (g).

**Notice to be given to members to serve on committee (S.O. 115).**—This standing order prescribes the notice which the Committee of Selection is required to give to a member to serve on a private bill committee. In practice, the requirements of sub-paragraph (a) of the order are regarded as sufficient, viz., that sufficient notice must be given to each member of his appointment as a member of a committee on any private bill or group of bills, and, in every case where a declaration is required to be signed and returned by a member, a blank form of the declaration should be transmitted to him, and a request that it may be forthwith returned properly filled up and signed.

**Members returning no answer (S.O. 116).**—If a member neglects to return the declaration in a reasonable time, or does not send a sufficient excuse, the Committee of Selection will report his name to the House, and he will be ordered to attend the committee on the bill (r); or to attend the House in his place, where, on offering sufficient apology for his neglect, he will be ordered to attend the committee (s).

**Members refusing to attend.**—If the Committee of Selection are dissatisfied with a member's excuse, they will require him to serve upon a committee, when his attendance will become obligatory, and if necessary will be enforced by the House.

On 5 May 1845 a member did not attend a committee on a group of railway bills to which he had been nominated, and his absence was accordingly reported to the House in the prescribed manner (t). He stated to the House that a correspondence had taken place between the Committee of Selection and himself, in which he had informed them that he was already serving on two public committees, and that his serving on the railway group committee was incompatible with those duties. But the House ordered him to attend the railway committee (u).

In 1846 the Committee of Selection, not being satisfied with the excuses of Mr. Smith O'Brien, nominated him a member of a committee on a group of railway bills in the usual manner. He did not attend the committee; his absence was accordingly reported to the House; and he was ordered to attend the committee on the following day. Being again absent, his absence was again reported; he attended in his place in the House and stated that he refused to attend the committee; upon which he was declared guilty

(g) C. J. (1845) 386; *ibid.* (1846) 904; *ibid.* (1849) 357 (and Suppl. to Votes, 1849, p. 168); *ibid.* (1850) 225 (and Suppl. to Votes, 1850, p. 72); *ibid.* (1851) 146 (and Suppl. to Votes, 1851, p. 312); *ibid.* (1852-53) 518, 524 (and Suppl. to Votes, 1853, p. 777); *ibid.* (1857-58) 200; *ibid.* (1860) 218; *ibid.* (1892) 398, etc. Special Report from Committee on Group A of Private Bills, relating to Kent Electric Power Bill, 28 May 1941.

(r) C. J. (1847-48) 590, 627; *ibid.* (1860) 138; *ibid.* (1862) 91; *ibid.* (1865) 369 (in this case no order was made).

(s) C. J. (1860) 94, 99, 106.

(t) See p. 921 as to S.O. 122 under which a report must be made to the House of the absence of members of committees.

(u) C. J. (1845) 399; Parl. Deb. (1845) 80, c. 166.

of a contempt, and was committed to the custody of the Serjeant at Arms (a).

**One member substituted for another (S.O. 117).**—The Committee of Selection have the power of discharging any member or members of a committee, and substituting an equal number of other members. It is not the practice, however, to discharge members from a committee while a bill is under consideration.

An unusual case occurred on 4 May 1869, when two members were added by the House to a committee on a group of private bills, but without the power of voting (b).

#### INTERVAL BETWEEN COMMITTAL OF OPPOSED PRIVATE BILL AND SITTING OF COMMITTEE (S.O. 177)

An interval of six days is required to elapse between the committal of every opposed private bill and the first sitting of the committee except in the case of an opposed bill certified under S.O. 3, when there are to be three clear days between the committal and the committee. Subject to this order, the Committee of Selection, as already stated, are empowered by S.O. 113 to fix the time for holding the first sitting of the committee on every private bill.

#### CASES OF DEPARTURE FROM ORDINARY PROCEDURE IN COMMITTAL OF PRIVATE BILLS

In all these matters the Committee of Selection ordinarily proceed in compliance with the standing orders; but where any departure from the standing orders, or the usual practice of the committee, is deemed advisable, or where, for any other reason, a particular mode of dealing with any bills is desired by the House, special orders have been made, or special directions to the Committee of Selection have been given.

For example, the House has directed the Committee of Selection to refer two or more bills to the same committee (c), or to form all the bills of a certain class into one group (d); to refer a bill to another committee (e); to remove a bill from a group, and refer it to a separate committee (f); to withdraw a bill from one group and place it in another (g); or to refer a bill to the Chairman of the Committee on Standing Orders, and two other members (h). Transferences of this kind, however, are now usually carried out by the Committee of Selection without directions from the House. Directions have also been given to appoint the first meeting of committees on an earlier

(a) Special report of Committee of Selection, C. J. (1846) 566, 582, 602-603; Parl. Deb. (1846) 85, c. 1071, 1152, 1290, 1300, 1351; *ibid* (1846) 86, c. 966, 1198. For more recent cases in which Members, reported absent from a private bill committee, have been ordered to attend, see C. J. (1900) 297, 305; *ibid*. (1902) 382; *ibid*. (1903) 197; *ibid*. (1905) 67; *ibid*. (1924) 249. For a case in which the Serjeant at Arms reported his inability to serve a Member with the order of the House for his attendance upon a committee, see C. J. (1914) 240, 241.

(b) C. J. (1868-69) 177. Cf. also *supra*, p. 579.

(c) C. J. (1845) 95, 224; *ibid*. (1846) 460; *ibid*. (1851) 280; *ibid*. (1868-69) 48, 63.

(d) C. J. (1849) 248.

(e) C. J. (1845) 607.

(f) C. J. (1850) 351.

(g) C. J. (1850) 418.

(h) Rock Life Assurance Company Bill, C. J. (1868-69) 137.

day (*i*), or forthwith, if the Committee of Selection should think fit (*k*); or not to fix the sitting of committees upon certain classes of bills until a later period (*l*); or otherwise dealing with the first meeting of committees (*m*). In 1855 the Westminster Land Company Bill was added to a group of private bills directly, by order of the House, without the intervention of the Committee of Selection; and an Instruction was given to the committee on the bill to sit and proceed forthwith (*n*).

In Session 1929-30, with a view to securing greater expedition, the Lord Privy Seal was empowered to certify bills which contained provisions relating to works the execution of which would substantially contribute to the early relief of unemployment. Where such a bill contained other provisions also, it was divided, the certified provisions proceeding separately as a certified bill, and the remaining provisions standing referred to the Committee of Selection or the Local Legislation Committee. The progress of the certified bills was regulated by the order of the House (*o*).

#### BILLS REFERRED TO EXCEPTIONALLY CONSTITUTED COMMITTEES

Private bills dealing with a subject which, in the opinion of the House, is of special interest are sometimes referred to a select committee nominated, like a committee on a hybrid bill partly by the House and partly by the Committee of Selection, or otherwise exceptionally constituted. The numbers of such a committee and the proportions in which it has been nominated by the House and the Committee of Selection have varied. In a few cases the members have been nominated entirely by the House (*p*), or entirely by the Committee of Selection (*q*). Private bills have also been committed to a select committee on a hybrid bill (*r*).

Amongst bills which have been treated in this way were various bills relating to London in 1871 and 1896 (*s*). In 1878 an order was made referring every opposed tramway bill, which authorized the use of mechanical power, to a select committee nominated partly by the House and partly by the Committee of Selection (*t*). In 1882 several private bills for electric lighting were referred to a select committee on a public electric lighting bill (*u*). In recent times the following bills have been referred to specially constituted committees: London County Council (Electric Supply) Bills, 1906 and 1907 (*a*); United Methodist Church Bill [Lords] and York (Micklegate Strays) Bill [Lords], 1907 (*b*); Great Northern, Great Central, and Great Eastern Railways Bill, 1909 (*c*); London County Council (General Powers)

(*i*) C. J. (1865) 405; *ibid.* (1866) 490; *ibid.* (1867) 427.

(*k*) C. J. (1847-48) 700; *ibid.* (1850) 513; *ibid.* (1852) 300.

(*l*) C. J. (1850) 72, 84; *ibid.* (1851) 67.

(*m*) C. J. (1854) 406; *ibid.* (1856) 256; *ibid.* (1857-58) 119, 254, 303.

(*n*) C. J. (1854-55) 279. Cf. also C. J. (1867-68) 158.

(*o*) C. J. (1929-30) 129. For bills certified in whole or in part, see C. J. (1929-30) 147, 263, 308, 321, 322.

(*p*) C. J. (1907) 416, 422; *ibid.* (1916) 82.

(*q*) C. J. (1867-68) 66, 74; *ibid.* (1900) 101; *ibid.* (1914) 80-81.

(*r*) C. J. (1867) 205, 207, 209; *ibid.* (1875) 216; *ibid.* (1882) 55, 56, 89; *ibid.* (1912-13) 381, 393.

(*s*) C. J. (1871) 59, 65; *ibid.* (1896) 116, 117.

(*t*) C. J. (1878) 52.

(*u*) C. J. (1882) 142, 165.

(*a*) C. J. (1906) 105; *ibid.* (1907) 207.

(*b*) C. J. (1907) 250, 416, 422.

(*c*) C. J. (1909) 103.



(Part VI), City of London (Various Powers) (Part III), and Glasgow Corporation (Celluloid) Bills, 1914 (*d*); Alexander's Restitution Bill [Lords], 1916 (*e*); Methodist Church Union and Methodist Church Union (Scotland) Bills, 1929 (*f*). The North Killingholme Pier Bill [Lords], 1912, was committed to a select committee on a hybrid bill (*g*).

Unless the question for committing a private bill to such an exceptionally constituted committee is agreed to, the bill stands referred to the Committee of Selection in the ordinary way (*h*).

#### PRIVATE BILLS COMMITTED TO A JOINT COMMITTEE

Private bills, either singly or in conjunction with other bills, are sometimes committed to a joint committee. The Commons members are usually nominated by the Committee of Selection (*i*), though on some occasions they have been nominated by the House itself (*k*); and power is usually given to the committee to send for persons, papers, and records. The number of members appointed by each House is now ordinarily four or five. The ordinary rules of *locus standi* are superseded by an order referring to the committee all petitions in favour of or against the bill which have been presented during the session (*l*), or a certain number of days before the meeting of the committee (*m*), or before a specified date (*n*). In the case of a joint committee appointed to consider a bill or bills originating in the House of Lords, it was formerly not the practice of the House of Commons to make any order regarding the hearing of the promoters or opponents of the bill before the committee. In Session 1934-35, however, it was decided that directions as to the hearing of promoters and opponents, similar to those given by the Lords to their members, should in future be given by the Commons to their members also. The members of a joint committee on a private bill do not sign the declaration required of members of an ordinary private bill committee (see p. 912), and their absence is not reported to the House. The procedure in a joint committee on a private bill follows that of a joint committee on a public bill or matter, so far as such procedure is relevant (see p. 629).

In recent times the following bills, originating in the Commons, have been committed to joint committees: Dublin Corporation and Clontarf Urban District Council Bills, 1900 (*o*); Metropolitan Water Board (Various Powers), and Metropolitan Water Board (Charges, etc.) Bills, 1907 (*p*); Thames Conservancy Bill, 1911 (*q*); several dock and harbour bills in 1919 (*r*);

(*d*) C. J. (1914) 80, 97, 101.

(*e*) C. J. (1916) 82.

(*f*) C. J. (1928-29) 125.

(*g*) C. J. (1912-13) 393.

(*h*) Cf. C. J. (1872) 75; *ibid* (1873) 73.

(*i*) C. J. (1900) 141, 172; *ibid*. (1928-29) 180.

(*k*) C. J. (1873) 178-79; cf. also C. J. (1908) 184; *ibid*. (1920) 224 (provisional order bill); *ibid*. (1927) 219 (hybrid bills).

(*l*) C. J. (1873) 178-79.

(*m*) C. J. (1900) 141.

(*n*) C. J. (1928-29) 180.

(*o*) C. J. (1900) 141.

(*p*) C. J. (1907) 86.

(*q*) C. J. (1911) 103.

(*r*) C. J. (1919) 54.

Metropolitan Water Board (Charges), Thames Conservancy, and Lee Conservancy Bills, 1921 (*s*); seven railway (Road Transport) bills in 1928 (*t*); six railway (Air Transport) bills in 1929 (*u*). The following bills, originating in the Lords, have been so treated: three railway amalgamation bills in 1900 (*a*); Metropolitan Water Board (New Works) Bill [Lords], 1911 (*b*); one gas and water and three water bills in 1921 (*c*); Dover Gas Bill and South Suburban Gas (Consolidation) Bill, 1928 (*d*).

**Joint Committee on Consolidation Bills.**—Private consolidation bills usually originate in the House of Lords and are referred to the Joint Committee on Consolidation Bills; the number of members appointed by each House is normally six.

In the two Sessions 1928 and 1928-29, two joint committees were appointed, one of which, the Joint Committee on Private Bills (Consolidation), was "to consider all private bills for the exclusive purpose of consolidating the provisions of existing private Acts of Parliament" (*e*). In Session 1929-30, one joint committee only was appointed, to deal with both public and private bills (*f*). In Session 1937-38 a Joint Committee on Consolidation Bills was set up, to which, in accordance with a further resolution agreed to by both Houses, all private consolidation bills were referred (*g*). In all these cases the committee were directed not to take into consideration any petition against a private bill which sought to alter the existing law.

The North Metropolitan Electric Power Supply (Consolidation) Bill [Lords], 1928, and the Sheffield Gas (Consolidation) Bill [Lords], 1929, were considered by the Joint Committee on Private Bills (Consolidation) (*h*); the London Building Acts (Consolidation) Bill [Lords], 1930, and the Shropshire Worcestershire and Staffordshire Electric Power (Consolidation) Bill [Lords], 1938, were considered by the Joint Committee on Consolidation Bills (*i*). The Middlesex County Council Bill, 1944, which was mainly a consolidation bill, but with an element of amendment, was referred to the Committee on Unopposed Bills.

**Proceedings in the second House on bills committed to a joint committee.**—The committee stage of a private bill which has been considered by a joint committee is dispensed with in the second House. In the House of Lords that stage is negatived in the case of a bill originating in the House of Commons, so that the bill proceeds to its third reading after being read a second time (*k*). In the case of a Lords' bill in the House of Commons, the standing orders relative to the committal stage of private bills are usually suspended, and the bill is ordered to lie upon the table (*l*); or the orders relative to both committal and

(*s*) C. J. (1921) 92.

(*t*) C. J. (1928) 66, 67.

(*u*) C. J. (1928-29) 180.

(*a*) C. J. (1900) 172.

(*b*) C. J. (1911) 103.

(*c*) C. J. (1921) 93.

(*d*) C. J. (1928) 103, 122, 147.

(*e*) C. J. (1928) 87, 157, 184, 187; *ibid.* (1928-29) 34, 66, 116, 127.

(*f*) C. J. (1929-30) 29, 34, 41, 54.

(*g*) C. J. (1937-38) 47, 57, 70, 78.

(*h*) C. J. (1928) 231; *ibid.* (1928-29) 137.

(*i*) C. J. (1929-30) 357; (*ibid.*) (1937-8) 251.

(*k*) L. J. (1911-12) 276, 288; *ibid.* (1919) 174, 185.

(*l*) C. J. (1911) 367; *ibid.* (1921) 273, 311, 332; *ibid.* (1928) 275; *ibid.* (1928-29) 182.

report stages are suspended, and the bill is ordered to be read the third time (*m*).

The London Building Bill [Lords], 1930, and the Shropshire Worcestershire and Staffordshire Electric Power (Consolidation) Bill [Lords], 1938, which had been considered by joint committees, were committed in the House of Commons for the purpose of introducing amendments of a drafting character, and considered by the Committee on Unopposed Bills, and reported with amendments from that committee (*n*).

#### NOTICES TO BE GIVEN OF MEETING OF COMMITTEE ON PRIVATE BILL AND OF ANY POSTPONEMENT OF SUCH MEETING (S.O. 199)

With regard to any private bill which stands referred in the ordinary way to the Committee of Selection, the clerk of the committee gives at least four clear days' notice in the Committee and Private Bill Office of the day and hour appointed for the first meeting of the committee on the bill if it is an opposed bill, one clear day's notice if the bill is a re-committed bill, and one day's notice if it is an unopposed bill. If this meeting is postponed, he gives immediate notice of such postponement. Precisely similar notices are given in the Committee and Private Bill Office in respect of any bill which is not referred to the Committee of Selection by the clerk of the committee to which such bill is referred.

#### " FILLED-UP " BILL TO BE DEPOSITED (S.Os. 137, 200)

Before the sitting of the committee on a private bill, certain proceedings must be taken by the promoters. The agent is required to deposit in the Committee and Private Bill Office a " filled-up " bill, signed by himself, as proposed to be submitted to the committee, two clear days before the meeting of the committee; and a copy of the proposed amendments is to be furnished by the promoters to such parties petitioning against the bill as shall apply for it, one clear day before the sitting of the committee.

By S.O. 137 copies of the filled-up bill must be before each member of the committee at the first sitting on the bill.

In 1845 certain committees upon bills reported that no " filled-up " bill had been deposited by the agent as required, and that the committee had therefore declined to proceed with the bill, and had instructed the chairman to report the circumstances to the House (*o*). In these cases the practice has been to revive the committees, and to give them leave to sit and proceed on a certain day, provided the " filled-up " bill shall have been duly deposited (*p*).

#### SUPERVISION BY THE CHAIRMAN OF WAYS AND MEANS (S.Os. 82, 84, 85)

Under S.O. 82, as already described (*supra*, pp. 859-60), it is the duty of the Chairman of Ways and Means to examine all private bills, whether

(*m*) C. J. (1900) 363, 371; cf. also C. J. (1920) 377 (provisional order bill).

(*n*) C. J. (1929-30) 400, 418; *ibid.* (1937-8) 302, 312.

(*o*) C. J. (1845) 261, 281, 302. Cf. also the objection raised regarding the " filled-up " bill in the case of the Truro, etc., Railway Bill (Group 2, 18 April, 1894.)

(*p*) C. J. (1845) 270, 302, 304.

opposed or unopposed, with the assistance of the Counsel to Mr. Speaker, and to call the attention of the House, and also, if he think fit, of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it ; and under S.O. 85 he is at liberty, at any time, to report any special circumstance regarding any private bill, or to inform the House that any unopposed bill should be treated as an opposed bill. To facilitate this supervision, the agent is not only required to lay copies of the original bill before the Chairman of Ways and Means and the Speaker's counsel, as already described (see p. 860) ; but S.O. 84 also provides that before the day appointed for the consideration of the bill by a committee, copies of the bill, as proposed to be submitted to the committee, must be laid before the chairman and counsel, duly signed by the agent, together with copies of any of the estimates and statements deposited in accordance with S.Os. 45 or 46. In the case of an opposed or recommitted bill such copies must be laid at least two clear days before the day appointed for the consideration of the bill in committee.

#### “ FILLED-UP ” BILL LAID BEFORE THE CHAIRMAN OF COMMITTEES, HOUSE OF LORDS

In the House of Lords, copies of the bill, as proposed to be submitted to the committee on the bill in the Commons, are also laid before the Chairman of Committees and his counsel ; and a simultaneous examination of the bill is consequently proceeding in both Houses. Amendments are suggested or required by the authorities in both Houses, which are either agreed to at once by the promoters, or after discussion are insisted upon, varied, modified, or dispensed with.

#### SUPERVISION BY PUBLIC DEPARTMENTS

In accordance with the provisions of S.O. 39, a printed copy of every private bill must be deposited on or before 4 December with the Treasury, and certain public departments. The other departments, with which bills relating to various subjects must be deposited, are also set out in this standing order ; while S.O.s 60 and 180 prescribe similar deposits which must be made at later stages, and S.O. 158 requires notice to be given to the Attorney General in the case of a bill which deals with charities. This provision enables the various public departments to obtain early knowledge of the contents of private bills and to decide whether, in respect of any bill, a report to the House on matters under their jurisdiction is called for. Thus, the Ministry of Health is the chief department concerned with bills promoted by local authorities for all purposes of local government, the Ministry of Transport is concerned with all bills relating to railways, tramways and waterways, the Admiralty with bills relating to tidal waters, and so forth, as may be seen from the provisions of S.O. 39. The officials of these departments are in frequent communication with the promoters of bills, and the supervision which they exercise, both by such consultation and by reports to Parliament, serves to ensure protection of public rights and the observance of public

Acts governing any matter to which a private bill relates. (See also pp. 924-25 for the procedure on reports from government departments.)

Up to 1936 no bills were required to be deposited at the Air Ministry; but, since the construction of aerodromes has made it necessary for the Air Ministry and, later, for the Ministry of Civil Aviation to consider whether any buildings or works in contemplation might affect the landing or movement of aeroplanes, S.O. 39 has been amended, so as to prescribe the deposit of every bill with those Ministries. The deposits at later stages are only required to be made at either Ministry, where the Secretary of State or the Minister requests such deposit to be made (see S.Os. 60 and 180) (*q*).

#### DEPOSIT OF BILLS WITH LONDON COUNTY COUNCIL, ETC.

S.Os. 40-43 prescribe the deposit of certain classes of bills with the London County Council, road authorities, catchment boards and fishery boards respectively (see also p. 898 for deposits under S.O.44).

#### AMENDMENTS TO CONCILIATE INTERESTED PARTIES

Before the meeting of the committee on a private bill, the promoter may, by proposing amendments of their own, endeavour to conciliate parties who are interested, and to avert opposition.

#### LIMITS TO SUCH AMENDMENTS BEFORE SITTING OF THE COMMITTEE

When the amendments consequent upon these various proceedings have been settled, the proposed amendments and clauses are inserted, in the filled-up bill (see p. 919); but care must be taken, in preparing these amendments, that they are within the "order of leave" (*r*), that they involve no infraction of the standing orders, and are not excessive in extent (*s*).

Where it was proposed to leave out the greater part of the clauses in the original bill, and to insert other clauses, the Chairman of Ways and Means submitted to the House that the bill should be withdrawn (*t*).

### II—COMMITTEE STAGE AND SUBSEQUENT PROCEEDINGS

The proceedings of committees on private bills are governed by certain standing orders, of which some are applicable only to committees on opposed bills, and others to all committees. S.Os. 119 (*u*) to 131 refer to committees on opposed bills, S.Os. 132 to 134 to committees on unopposed bills, and S.Os. 135-162 to committees on bills, whether opposed or unopposed. It is proposed to review here the provisions of the

(*q*) C. J. (1935-36) 367, 368.

(*r*) See *supra*, p. 894.

(*s*) C. J. (1852-53) 406.

(*t*) Bristol Parochial Rates Bill, C. J. (1845) 535; and cf. Porthleven Harbour Bill, C. J. (1869) 180.

(*u*) For S.O. 119, which relates to the constitution of a committee on opposed bills, see p. 912.

more important of these standing orders, before the actual proceedings which occur in the committee are described.

## STANDING ORDERS RELATING TO COMMITTEES ON OPPOSED BILLS

### DECLARATION OF MEMBERS (S.O. 120)

No committee on an opposed private bill, or group of bills, can proceed to business until the required declaration (see p. 912) has been signed by each of the members (a).

On 28 February 1860 leave was given by the House to the committee on Group 1 of Railway Bills to sit and proceed to business, notwithstanding that one of the members (who had received notice of his appointment to the committee) had not signed the required declaration (b).

On 9 July 1900 the committee on Group J of Private Bills having proceeded with the business referred to them, although one of the members of the committee (who was reported absent) had failed to sign his declaration, the House ordered that the proceedings before the committee should notwithstanding "be deemed to be, and be, valid" (c).

If a member who has signed this declaration should subsequently discover that he has a direct pecuniary interest in a bill, or in a company who are petitioners against a bill, he will state the fact to the committee, and will be discharged by the House (or by the Committee of Selection) from further attendance (d).

### QUORUM (S.OS. 121, 122)

The committee may not proceed if more than one of the members be absent, unless by special leave of the House; but no member of a committee on an opposed private bill may absent himself, except in case of illness, or by leave of the House (e). Members not present within one hour of the time of meeting, or absenting themselves, are reported to the House at its next sitting, when they are either directed to attend at the next sitting of the committee (f), or, if their absence has been occasioned by illness (g), domestic affliction (h), or other sufficient cause, they are discharged from further attendance (i). If the chairman is absent, the member next in rotation on the list of members, who is then present, is to act as chairman (S.O. 121).

**Quorum of committee (S.O. 121).**—If at any time more than one of the members is absent, the chairman suspends the proceedings, and if, at the expiration of an hour, more than one member is absent, the committee is adjourned to the next day on which the House shall sit, when it meets at the hour at which it sat on the day of the adjournment.

(a) C. J. (1854) 207; *ibid.* (1862) 258.

(b) C. J. (1860) 94.

(c) C. J. (1900) 304, 305; Parl. Deb. (1900) 85, c. 939. See also C. J. (1911) 341; H. C. Deb. (1911) 28, c. 1012; C. J. (1913) 75.

(d) C. J. (1845) 386; *ibid.* (1846) 904; *ibid.* (1892) 398.

(e) C. J. (1850) 418.

(f) C. J. (1900) 297, 305; *ibid.* (1930-31) 228. In some cases no order has been made, C. J. (1898) 183; *ibid.* (1926) 225.

(g) C. J. (1903) 94.

(h) C. J. (1905) 208, 217.

(i) The discharge of members is usually effected by the Committee of Selection (see p. 914 and S.O. 117), but occasionally by the House, C. J. (1854-55) 294.

If, after a committee has been formed, a quorum of members cannot attend, the chairman reports the circumstance to the House, when the members still remaining will be enabled to proceed, or such orders will be made as the House may deem necessary (*k*).

#### ORDER IN WHICH BILLS ARE TO BE CONSIDERED (S.O. 124)

The committee on each group of bills are to take first into consideration the bill or bills named by the Committee of Selection ; and are to appoint the day on which they will consider each of the other bills, and on which they will require the parties promoting and opposing to enter appearances. The committee clerk is to give at least two clear days' notice of such appointment, in the Committee and Private Bill Office ; and in case the committee postpone the consideration of any bill, notice is given of the day to which it is postponed. It is the usual practice of the committee to consider the several bills in the group in the order prescribed by the printed list ; and this practice is not departed from, unless sufficient grounds be shown for a different arrangement of the business (*l*).

The agent for each petition against a bill must be prepared with a certificate from the Committee and Private Bill Office, that he has entered an appearance upon the petition. This document is delivered to the committee clerk on the first day on which the bill is set down for consideration by the committee and, unless it be produced, the petition will be entered in the minutes as not appeared upon (*m*).

On 23 May 1848 a petition was presented, praying that a petitioner against a private bill be allowed to be heard upon his petition, notwithstanding his having neglected, until after the commencement of business by the committee, to present a certificate from the Committee and Private Bill Office of his having entered an appearance upon his petition. The petition was referred to the committee on the bill, without any further instruction (*n*).

In 1874 a petitioner against the Bolton-le-Sands, etc., Reclamation Bill, having failed to enter an appearance, presented a petition that he should be heard on his former petition when the bill was recommitted, and this petition for leave to be heard was referred by the House to the committee on the recommitted bill (*o*).

#### WHEN OPPOSED BILLS BECOME UNOPPOSED (S.O. 131)

If no parties appear on the petitions against an opposed bill, or, having appeared, withdraw their opposition before the evidence of the promoters is commenced, the committee are required to refer the bill back, with a statement of the facts, to the Committee of Selection, who treat it as an unopposed bill.

In 1911, the Local Government Provisional Orders (No. 3) Bill became unopposed after evidence had been taken, and, through inadvertence, was

(*k*) C. J. (1890) 402 ; *ibid.* (1897) 143. See also Parl. Deb. (1899) 67, c. 27.

(*l*) Minutes of Committees, 1856, Railway Bills, Vol. I, p. 137 ; *ibid.* 1857, Vol. II, p. 634.

(*m*) Minutes of Committee on Pontypool Gas and Water Bill, 1890, Vol. 2, Group C. See also pp. 931-32.

(*n*) C. J. (1847-48) 552, and Suppl. to Votes, 1847-48, p. 395.

(*o*) C. J. (1874) 204

referred back to the Committee of Selection ; but the original committee was revived by order of the House for its further consideration (*p*).

Where the bill has been one of a group of bills and the opposition has been withdrawn, an Instruction has been given to the committee on the group to sit and proceed with the bill (*q*).

#### REFERENCE OF PETITIONS TO COMMITTEE (S.O. 126)

Every petition, providing that it has been properly deposited, whether against a bill, against amendments proposed in the filled-up bill, or complaining of any matter that has arisen during the progress of the bill before the committee, in which the petitioners pray to be heard by themselves, their counsel or agents, stands referred to the committee on the bill ; and copies of all such petitions are to be laid before each member of the committee. This last provision, incorporated in this order in 1945, was originally an order of the House of 16 February 1865 (*r*). A further order (S.O. 172), first made in 1945, provides that all such petitions shall be printed or typewritten by the agents concerned, and that copies shall be supplied, not later than one day after deposit, to the agent for the bill, and, on payment, to all parties interested who may apply therefor. (See also p. 871 for the hearing and evidence of parties.)

#### STANDING ORDERS RELATING TO COMMITTEES ON UNOPPOSED BILLS

The composition of the Committee on Unopposed Bills has already been described (p. 911). Two other standing orders relate to procedure before this committee.

**Member if interested not to vote (S.O. 133).**—No member of a committee on an unopposed bill in which he is locally or otherwise interested may vote on any question that may arise, but he may attend and take part in the proceedings of the committee.

**Right of promoters to be heard (S.O. 134).**—The promoters of an unopposed private bill are entitled to be heard before the Committee on Unopposed Bills in favour of the bill by themselves or their agents, and to tender evidence. This order, a corollary of S.O. 127 with regard to opposed bills (see p. 930), was first made in the revision of 1945, though the practice had long existed.

#### STANDING ORDERS RELATING TO COMMITTEES ON BILLS WHETHER OPPOSED OR UNOPPOSED

Whether the bill be opposed or unopposed, there are various standing orders which are binding upon the committee on every private bill, and others which relate only to particular classes or descriptions of bills. It is the duty of every committee to take care that the provisions required by the standing orders to be inserted in private bills are included in them

(*p*) C. J. (1911) 280.

(*q*) C. J. (1870) 72 ; *ibid.* (1871) 218.

(*r*) C. J. (1865) 69.



wherever they are applicable. This may be effected in some cases by the incorporation of general Acts.

#### METHOD OF DECIDING QUESTIONS (S.O. 135)

All questions before committees are decided by a majority of voices ; and, whenever the voices are equal, the chairman has a second or a casting vote.

#### COPIES OF " FILLED-UP " BILL TO BE LAID BEFORE MEMBERS (S.O. 137)

Copies of the bill, as proposed to be submitted to the committee, are to be laid, signed by the Agent, before each member at the first meeting of the committee.

#### NAMES OF MEMBERS TO BE ENTERED IN MINUTES (S.O. 138)

The names of the members attending each committee are entered by the committee clerk in the minutes of proceedings ; and when a division takes place the clerk takes down the names of the members, distinguishing on which side of the question they respectively vote. The minutes of proceedings are laid upon the Table of the House with the report of the committee (S.O. 145). Between 1925 and 1945 this order was omitted, with the result that the minutes of proceedings of committees on bills, not having been laid on the Table, could not be consulted by outside persons.

#### PROOF OF COMPLIANCE WITH CERTAIN STANDING ORDERS ONLY (S.O. 139)

The committee are precluded from examining into compliance with such standing orders as are directed to be proved before the Examiners, unless by a special order from the House.

Practically the only case in which such an order is given is where the House (on the report of the Standing Orders Committee) allows parties to proceed with their bill, provided that they prove compliance before the committee with particular requirements with which they had neglected to prove compliance under the preliminary standing orders before the Examiners (s).

When any special inquiry in reference to the standing orders is involved, however, the matter has been referred to the Examiners rather than to the committee (see p. 853).

#### REPORTS FROM PUBLIC DEPARTMENTS TO BE REFERRED TO COMMITTEE (S.O. 144)

All reports made by any public department or by the Attorney General upon a private bill stand referred to the committee on the bill ; and whenever any recommendation has been made in such a report the committee may, if they think fit, hear an officer of the department in explanation of the report and are required to notice such recommendation

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(s) C. J. (1854) 78, and Suppl. to Votes, 1854, p. 581-82.

in their report and to state their reasons for dissenting, should such recommendation not be agreed to.

In earlier days, before the making of reports to Parliament on private bills by public departments had become a recognized practice, more particular orders were given by the House directing departments to present reports on certain private bills, the earliest of such directions being those to the Board of Trade to report on railway and canal bills (*i*). There were also certain standing orders directing either that a report from a specific department should be made on certain bills or that provisions of a certain kind should not be allowed in a bill unless such a report had been made. But in the revision of 1945 (*ii*) the reference of such reports to committees was provided for by a single order (S.O. 144), and all other standing orders of the kind were omitted except those relating to bills affecting level of roads and level crossings (see below). The reason for these omissions was that the vigilance of public departments and their competence to report on all matters which they considered necessary were now sufficiently well established to make these mandatory orders to committees unnecessary.

Other documents, such as correspondence with a government department (*a*), or minutes of evidence taken before committees on bills in former sessions (*b*), or the current session (*c*), may also be referred to the committee on a bill.

#### AGREEMENTS (S.O. 157)

Where any agreement is to be sanctioned by any bill, such agreement is to be printed as a schedule to the bill (*d*).

### STANDING ORDERS RELATING TO COMMITTEES ON CERTAIN KINDS OF BILLS

#### BILLS AFFECTING LEVEL OF ROADS AND RAILWAY ; TRAMROAD OR TRAMWAY BILLS

**Level of roads (S.O. 146).**—When the level of any road is proposed to be altered in making any work, an ascent steeper than 1 foot in 30 is not to be allowed, unless a report from the Ministry of Transport is laid before the committee, and unless the committee, after considering the report and hearing an officer of the Ministry, if they think fit, recommend steeper ascents, with the reasons and facts upon which their opinion is founded. A sufficient fence, 4 feet high at least, is to be erected on each side of every bridge proposed to be constructed.

**Level crossings (S.O. 147).**—The committee on a bill is not to allow the construction of a railway or tramroad so as to cross a railway, tramway, tramroad or public carriage-road on the level, or the construction of a tramway so as to cross a railway on the level, unless a report from the Ministry of Transport is laid before the committee, and the committee, after proceeding as described in the preceding paragraph,

(*i*) C. J. (1857) 128 ; *ibid.* (1862) 42.

(*ii*) See report of the select committee, H. C. 30, pp. 14, 19, 20 (1945).

(*a*) C. J. (1857-58) 160, 161, 166. Cf. also L. J. (1854) 256.

(*b*) C. J. (1857) 156, 173, 205, 235 ; *ibid.* (1862) 267 ; *ibid.* (1867) 218, 221 ; *ibid.* (1890-91) 218.

(*c*) C. J. (1845) 536 ; *ibid.* (1900) 289.

(*d*) For a case in which, and the conditions upon which, compliance with this standing order was dispensed with, see C. J. (1912-13) 42, 263.

recommend the level crossing, giving reasons and facts. In every clause authorizing a level crossing the number of lines of rails authorized to be made at such crossing is to be specified.

**Provision for completion of line (S.O. 148).**—In any railway, tramroad or tramway bill the committee on the bill are to make such provision as they deem necessary for the completion within a specified time of the line of railway, tramroad or tramway.

This is all that remains since 1945 of two former standing orders (then numbered 166 and 167) under which elaborate provisions were made for enabling persons damnified by non-completion or abandonment of the work to make claims against the deposit of a proportion of the estimate of expense (made under another standing order also repealed in 1945) for the payment of compensation for loss suffered. These orders were originally made in 1867 (e).

There are also certain standing orders in this category which make provision for certain special clauses to be inserted in railway, etc., bills.

**Railway not to be exempt from general acts (S.O. 149).**—In all railway bills a clause is to be inserted, providing that the railway shall not be exempted from the provisions of any general acts now in force or which may hereafter pass in any session.

**Statement as to length of line (S.O. 150).**—In every railway, tramroad or tramway bill the length of the line is to be set forth in a clause describing the works, with a statement, in the case of each tramway, whether it is a single or a double line.

**Tramroad bills (S.O. 151).**—With regard to tramroad bills, this standing order provides that in every bill for the construction of a tramroad of railway gauge, and intended to communicate with a railway, a clause is to be inserted providing that the Railway and Canal Traffic Acts and s. 72 of the Railways Act, 1921, shall apply to the company and tramroad.

#### TRAMWAY BILLS

**Distance between passing vehicles when used on tramway (S.O. 152).**—Where double lines are indicated on the plan deposited in respect of a tramway bill, provision is to be made that there is a distance of not less than 15 inches between the sides of the widest carriages and the engines to be used, when passing one another.

**Restriction on power of acquisition of tramways by local authorities (S.O. 153).**—In the case of tramways, no powers are to be given to any local authority to construct, acquire, take on lease or work any tramway beyond the limits of their district, unless it is in connection with a tramway which belongs to them or which they are authorized to construct, acquire, or work, and unless the committee on the bill determine that, having regard to the special local circumstances, such powers ought to be given. If the committee so determine, they must specify what portion of the tramway will be beyond the district of the local authority to whom such powers are given ; and they must insert a protective clause (in terms indicated in the

(e) See 13th edition of this work, pp. 774, 775. Report of Select Committee on Private Bill Standing Orders, H. C. 30 (1945) pp. 5, 19.

standing order) conferring upon the local authority, in whose district it will be situate, an eventual option of purchasing such tramway or portion of tramway, unless they report, stating their reasons, that such a clause is not required.

**Running Powers in tramway bills (S.O. 154).**—Where a local authority are empowered to work tramways belonging to them or authorized to be acquired by them, they may also be empowered to enter into agreements for running powers over any tramways in connection with those that they so work. But in such cases the committee on the bill must make provision as to the approval of such agreements by the Ministry of Transport and as to the observance of certain other conditions, and must report the circumstances specially to the House.

#### BILLS AFFECTING CHARITIES OR EDUCATIONAL FOUNDATIONS (S.O. 158)

Provision is made by this standing order that, with certain exceptions, private bills affecting charities and educational foundations in England shall not be considered in committee until the House has received a report from the Attorney General which stands referred to the committee.

#### ACCOMMODATION FOR WORKMEN ON WORKS (S.O. 159)

In the case of every bill authorizing the construction of works outside London or any municipal borough, if the committee are of opinion, in view of the number of workmen to be simultaneously employed and the nature and situation of the works, that such an inquiry is desirable, they are to inquire into the question of the sufficiency of the accommodation and service available or proposed by the promoters to be provided under the bill for the proper housing and sanitary requirements of persons employed in constructing the works authorized and for the treatment of cases of sickness, infectious disease, or accident; and if they think that further accommodation or service for those purposes ought to be provided, they are to insert in the bill such clauses as in their opinion are necessary to secure the provision of satisfactory accommodation or service for those purposes.

This standing order has been applied by instruction to a bill as if it were a bill authorizing the construction of works (*f*).

#### COMPENSATION WATER (S.O. 160)

In the case of a bill for impounding or abstracting the whole or any part of, the water of any river or stream, the committee are to inquire into the expediency of providing, where a dam is to be constructed, that the water to be supplied in compensation should be given in a continuous flow throughout the twenty-four hours of the day, and, in any other case, of making provision for limiting the quantity to be abstracted, and to report accordingly. The standing order also lays down the considerations to

which the committee should have regard in determining whether any and, if so, what provision should be made.

#### LIMITS OF BURIAL GROUND, GAS WORKS, ETC., TO BE DEFINED (S.O. 161)

In every bill for making gas works or sewage works, or works for the manufacture or conversion of the residual products of gas or sewage, or electric generating station, or for making, constructing or extending any sewage farm, cemetery, burial ground, crematorium, destructor, hospital for infectious diseases, there is to be a clause defining the lands in or upon which the same are to be made or constructed.

#### BILLS RELATING TO GAS AND WATER COMPANIES (S.O. 162)

In every bill in which an existing gas or water company is authorized to raise additional capital, provision is to be made for the offer of such capital by auction or tender, unless the committee report that such provision ought not to be required, with their reasons.

Though the auction clause is invariably inserted in gas and water bills, it is now the usual practice to insert clauses enabling the company to issue shares to consumers and employees at the current market price, and subject to such conditions as the department concerned may impose to issue shares for subscription by the public (g).

A second paragraph of this order, omitted in 1945, empowered the committee so to regulate the price of gas, that any reduction of the authorized standard price should entitle the company to make a proportionate increase of dividend, and that any increase above the standard price should involve a proportionate decrease of dividend.

The reason for this omission was that in recent years the sliding scale by standard price and standard dividend has been largely superseded by what is known as the basic price and dividend system. First introduced in 1920 by the South Metropolitan Gas Company's Act, the system was in 1928 subjected to an inquiry by a joint committee of both Houses on two bills promoted by the South Suburban Gas Company and the Dover Gas Company. The committee allowed both bills to proceed, and, in consequence, the system has been adopted in subsequent bills. It has, however, been the subject of two other inquiries by joint committees in 1932 and 1936-7 (h). The principle on which the system works is set out in paragraph 7 of the report of the Joint Committee on Gas Undertakings (Basic Prices), 1932.

#### APPLICATION OF MONEY TO BE RECITED IN LOCAL AUTHORITIES' BILLS (ENGLAND AND WALES) (S.O. 155)

In the case of bills authorizing a local authority in England or Wales to borrow money for any matter within the jurisdiction of the Board of Trade, Ministry of Health, Ministry of Transport, or Electricity Commissioners for permanent works, the proposed application of the money (except so far as the borrowing power is to be exercised subject to the sanction of the Board or Ministry or Commissioners) is to be recited in the bill, and to be proved before the committee, while copies of the

(g) See also Gas Undertakings Act, 1934, s.1.

(h) H. C. 19 (1932); H.C. 110 (1937); See also H. C. 30 (1945), p. 15.

estimates of expenditure and statements required to be deposited under S.Os. 45 and 46 are also to be laid before the committee.

#### BILLS PROMOTED BY LOCAL AUTHORITIES (S.O. 156)

In any bill promoted by, or proposing to confer powers on, a local authority, the committee are required to consider the clauses of the bill with reference to certain considerations set out in the order. The most important of these are whether the bill assigns a period for the repayment of any loan or for the redemption of any charge or debt exceeding sixty years or any period disproportionate to the duration of the works to be executed or to any other objects of the loan, charge or debt, and whether the bill gives borrowing powers for purposes for which such powers already exist or may be obtained under any public Act, without subjecting the exercise of the powers to the consent of a government department. The committee must report on these points, in particular whether a term for repayment or redemption exceeding sixty years has been allowed (with the reasons therefor) and whether any report from a public department relative to the bill has been referred to them and in what manner its recommendations (if any) have been dealt with.

Previously to the revision of the standing orders in 1945 the committee, under this order, was prohibited from allowing the term of sixty years for repayment, etc., to be exceeded; and though, in contravention of that provision, a period exceeding sixty years was sanctioned by committees in numerous cases, and was subsequently approved by the House on the consideration stage (*i*), the correct practice was for the committee to refuse to grant a period in excess of sixty years, and, where such a period was in the bill as laid before them, to amend the period so as not to exceed sixty years. If they considered a longer period justified by the circumstances of the case, they made a recommendation in their report to that effect, and, if he thought fit, the Chairman of Ways and Means moved a motion asking the House to agree with the recommendation (*h*).

In considering any provisions in the bill as to borrowing powers and powers relating to police, sanitary, and local government matters, the committee must have regard to the provisions as to such powers in existing general Acts; and they must report specially upon these and other points specified in the standing order (*l*).

#### LONDON COUNTY COUNCIL BILLS (S.Os. 221-223)

In the case of the annual money bill of the London County Council the committee on the bill is precluded from reducing the amount shown in the recited estimates for any expenditure already authorized by statute except by an express instruction of the House. An alteration of the

(*i*) C. J. (1887) 404; Parl. Deb. (1887) 318, c. 300; C. J. (1889) 410, 415; Parl. Deb. (1889) 339, c. 879; C. J. (1901) 158; Parl. Deb. (1901) 93, c. 572-80; C. J. (1922) 252, 256; H. C. Deb. (1922) 156, c. 668, 799; C. J. (1926) 232, 257; *ibid.* (1927) 267, 279; *ibid.* (1929-30) 72; *ibid.* (1932-33) 112.

(*h*) Bristol Corporation Bill [Lords], C. J. (1937-38) 350.

(*l*) See the sessional order of 16 December 1937, C. J. (1937-38) 69, and the Chairman of Ways and Means' remarks, H. C. Deb. (1937) 330, c. 1309-10. See also C. J. (1938-39) 37.

mode of dealing with the Consolidated Loans Fund or of borrowing by the council is not to be authorized by a bill promoted by the council unless a report by the Treasury is presented to the House. The report is to be considered by the committee on the bill, who, if they disagree with the Treasury, are to report the fact and their reasons to the House. The committee are also to report specially how any matters in any report by the Treasury on a bill or on the borrowing of the council or management of the Consolidated Loans Fund during the previous financial year have been dealt with by the committee. If no such report is referred, the committee must report that fact to the House.

### PROCEEDINGS IN COMMITTEE

The various matters which are required by the standing orders to be reported upon by committees or to be proved before them, and the peculiar provisions required to be inserted in particular bills having been considered, the general proceedings of committees upon private bills must now be briefly explained. These are partly regulated by the usage of Parliament, partly by standing orders, and partly by statute.

**Committee's power to hear evidence (S.O. 136).**—By this order, first made in 1945, it is declared that a committee are not empowered, without express authority from the House, to hear evidence other than that which may be tendered by the parties entitled to be heard. S.O. 127, in the case of opposed bills, and S.O. 134, in the case of unopposed bills, lay down what parties are so entitled.

#### (1) COMMITTEE ON UNOPPOSED BILLS

The constitution of the Committee on Unopposed Bills, which is laid down by S.O. 132, has already been described (see p. 911). With regard to its proceedings, though they are more brief and less formal than those of a committee on an opposed private bill, it must be remembered that, as there are no opponents of the bill, a special responsibility devolves on the committee in their consideration of the preamble and provisions of the bill to ensure that the interests of the public are effectually cared for and that the bill conforms with the standing orders of the House. This responsibility is imposed chiefly upon the Chairman of Ways and Means, who is *ex officio* chairman of the committee when present, and who, being an officer of the House as well as a Member, is entrusted with the special duty of examining, with the assistance of Mr. Speaker's Counsel, every private bill, whether opposed or unopposed. The promoters therefore have to prove the preamble, to the satisfaction of the committee, by the production of the necessary evidence, and by such explanations as may be required of them. They have to satisfy the committee as to the propriety of the several provisions of the bill; that all the clauses required by the standing orders are inserted in the bill; and that such standing orders as must be proved before the committee have been complied with. Counsel are not heard by the committee, the promoters' case being presented by the agent for the bill.

On 4 May 1906, in the case of the Mid-Oxfordshire Gas Bill, the committee, after hearing the evidence, announced that they considered the finance of the bill so unsatisfactory that, on grounds of public policy, they declared the preamble of the bill not proved, and reported accordingly to the House (*m*).

In the case of the Ministry of Health Provisional Order (Helston and Porthleven Water) Bill in 1936, the Committee on Unopposed Bills, not being satisfied with the case put before them, adjourned the consideration of the bill until an inquiry had been held by the Ministry of Health. On the receipt of the report of the inquiry the bill was approved by the committee and reported to the House. (*n*)

It has been stated above (p. 919) that the Chairman of Ways and Means is empowered by S.O. 85 to inform the House that in his opinion any unopposed private bill should be treated as an opposed bill; and he can exercise this power, whether or not consideration of the bill has been commenced in the Committee on Unopposed Bills (*o*). Under S.O. 112, if such a report is made to the House, the bill stands again referred to the Committee of Selection, and is then dealt with as an opposed bill.

## (2) COMMITTEES ON OPPOSED BILLS

**Committee-room: when open and when cleared.**—When counsel are addressing the committee, or while witnesses are under examination, the committee room is an open court; but when the committee are about to deliberate, all the counsel, agents, witnesses, and strangers are ordered to withdraw, and the committee sit with closed doors. When they have decided any question, the doors are again opened, and the chairman acquaints the parties with the determination of the committee, if it concerns them.

**Parties appear before the committee.**—The first proceeding of a committee on an opposed bill, when duly constituted, is to call in all the parties. The counsel in support of the bill appear before the committee. The petitions against the bill, upon which an appearance has been taken out, are read by the committee clerk; and the counsel or agents appear in support of such petitions (*p*). If an appearance has not been taken out on any petition the opposition on the part of the petitioners is held to be abandoned.

**Appearances upon petitions against bill.**—If parties have neglected to enter their appearance at the proper time they will not be entitled to be heard (*q*). In some special cases, however, indulgence has been granted to them (*r*).

(*m*) C. J. (1906) 163, and Minutes of the Committee.

(*n*) C. J. (1935-36) 319, and Minutes of the Committee.

(*o*) C. J. (1906) 271; Private Business, 1906, p. 647; C. J. (1922) 106; *ibid.* (1935-36) 309.

(*p*) Before cases of *locus standi* were heard by the Court of Referees (see p. 873) it was also usual at this time to intimate that objections would be raised to the hearing of petitioners.

(*q*) See p. 865; Suppl. to Votes, 1849, pp. 204, 288; and *ibid.* 1853, p. 829. Minutes of Committees on opposed bills, 1857, Vol. II, p. 793; Minutes of Group 2, 1860, pp. 87-88, etc.

(*r*) Minutes of Committee on Group 3 (15 May), 1860; on Group 8 (13 March), 1860; on Group 3 (4 March), 1862; on Group 1 (7 July), 1864, etc.



In 1863 the agent who had deposited a petition stated that there was no appearance upon it. Another agent immediately entered an appearance; and as it was shown that he had regularly obtained the appearance paper from the Private Bill Office, on the production of a letter from the secretary to the company, written by order of the board of directors, stating that they desired to change their agent, and authorizing him to prosecute their petition, the committee allowed the petitioners to be heard (*s*). An appearance paper has been allowed to be amended, where it stated that a petition praying to be heard against the preamble related to clauses only (*t*).

#### **Appearance upon petitions on matters arising in committee.**

—Where petitions complain of matters arising during the sitting of the committee, or of amendments proposed to be made in the bill, appearances are allowed to be entered, as the occasion arises (*u*).

In the case of the Glasgow Corporation Tramways Bill, 1879, which after being referred to a group as an opposed bill became unopposed, a petition was deposited complaining of matters which had arisen during the sitting of the Committee on Unopposed Bills. The Chairman of Ways and Means presented a report from the committee of this circumstance, and the bill was recommitted to the former committee (*a*).

**Hearing of solicitors.**—Difficulties have sometimes arisen, when counsel have not been retained, or are absent, in regard to the right of solicitors to be heard as agents for the parties, unless they have been entered as agents for the bill or petition (see p. 864).

In 1844 a solicitor was refused a hearing as an agent before one of the sub-committees on petitions for private bills (the predecessors of the Examiners), and it was ruled that such refusal was justified by practice, and by the construction of the standing order (*b*); and this rule has since been followed by the Examiners. Before committees on private bills, however, solicitors have often been heard without objection (*c*), where it has been for the convenience of the parties; but in the Mersey Conservancy and Docks Bills, 1857, a solicitor, whose name was specified in the appearance as solicitor for a petition, on claiming to be heard, received an intimation from the committee that he would not be entitled to address the committee until he had entered himself as a parliamentary agent (*d*). The Speaker, therefore, authorized the clerks in the Private Bill Office to enter his name as agent for the petition, in addition to that of the agent who had originally taken out the appearance; the latter being still responsible for the payment of the fees, and for the observance of the rules and orders of the House. Before the Court of Referees a solicitor who does not appear upon his own petition cannot be heard, unless he is a parliamentary agent (*e*); nor can a petitioner be heard otherwise than by himself, his counsel, or parliamentary agent (*f*).

**Bills to be first taken into consideration.**—In the case of a committee on a group of bills, as already stated, the committee take the

(*s*) Minutes of Committee, Group 9 (18 May), 1863.

(*t*) Minutes of Committee, Group 3 (5 July), 1859.

(*u*) Cf. S.Os. 91 and 129, and p. 872.

(*a*) C. J. (1878-79) 229, and Minutes of Group 11, 13 and 23 May 1879.

(*b*) Parl. Deb. (1844) 73, c. 583.

(*c*) Minutes of Committees on opposed Bills, 1857, Vol. II, pp. 645, etc.

(*d*) Minutes of Committees on opposed Bills, 1857, Vol. II, pp. 643, 645, 647.

(*e*) Birkenhead, Chester, etc., Railway Bill, 1873, 1 C. & R. 3; Coombe Hill Navigation Bill, 1876, *ibid.* 216.

(*f*) 1 C. & R. 8.

bill or bills first into consideration which have been named by the Committee of Selection ; and unless a bill comprised in the group be set down for the first day, the promoters and opponents are not to enter their appearance on that day in respect of such bill.

**Preliminary objections.**—When the parties are before the committee, the senior counsel for the bill opens the case for the promoters. A preliminary objection has sometimes been raised by petitioners to proceeding further with the bill (*g*). These objections, however, have not usually been sustained. They ordinarily have referred to questions inherent in the principle and inception of the bill, and as such might have been raised on its second reading. As the bill has been referred by an order of the House to a committee for consideration, the strong presumption is that the duty of the committee is to deal with the bill on its merits. Preliminary objections have sometimes been sustained when they have arisen on matters which have occurred after the second reading of a bill.

**Proceedings in support of the preamble.**—Unlike the practice in regard to public bills (see p. 517) the preamble of a private bill is first considered ; and if the preamble is opposed, the counsel addresses the committee more particularly upon the general expediency of the bill, and then calls witnesses to prove every matter which will establish the truth of the allegations contained in the preamble. In a railway bill, this is the proper occasion for producing evidence to satisfy the committee upon the most material of the points which, by the standing orders, they are obliged to report to the House. The witnesses may be cross-examined by the counsel who appear in support of the several petitions against the preamble, but not, as to the general case, by the counsel of parties who object only to certain provisions in the bill. Cross-examination is confined to matters comprised in the petitions, except when it is sought to discredit a witness. After the cross-examination each witness may be re-examined by the counsel in support of the bill.

**Rules as to the hearing of petitioners against the preamble.**—As already stated (see p. 923) all petitions against a private bill, which have been deposited in accordance with the standing orders, and in which the petitioners pray to be heard by themselves, their counsel, or agents, stand referred to the committee ; and such petitioners, subject to the rules and orders of the House, shall be heard upon their petition, if they think fit, and counsel heard, in favour of the bill, against the petition. Unless petitioners pray to be heard against the preamble, however, they are not entitled to be heard, or to cross-examine any of the witnesses of the promoters upon the general case, or otherwise to appear in the proceedings of the committee, until the preamble has been disposed of. Nor will a general prayer against the preamble entitle a petitioner

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(*g*) London and North Western Railway (New Works, etc.) Bill, 1873 ; Birmingham (Corporation) Water Bill, 1875 ; Stockton and Middlesbrough Corporations Water Bill, 1876 ; Brighton and Hove Gas Bill, 1881 ; Birkenhead Improvement Commissioners Bill, 1867 (sustained, excessive alterations in a "filled-up" bill) ; Hammersmith and Fulham Recreation Ground Bill, 1884 (sustained) ; Great Forest of Brecknock Bill, 1893 ; Local Government Provisional Orders (No. 15) Bill, 1903 ; Sale of Bread (London) Bill, 1905, etc.

to be heard against it, if his interest be merely affected by certain clauses of the bill (*h*). Petitioners, however, have been heard against the preamble of a bill, although the word "preamble" was not in the prayer of their petition, when their intention was clearly shown by the context (*i*). The proper time for urging objections to parties being heard against the preamble is when their counsel or agent first rises to put a question to a witness, or to address any observations to the committee. The counsel for the bill having been heard and all the witnesses in support of the preamble having been examined, the case for the promoters is closed.

**Proceedings in support of petitions against the preamble.**—When petitioners appear against the preamble, their counsel either opens their case or reserves his speech until after the evidence. Witnesses may be called and examined in support of the petitions, cross-examined by the counsel for the bill, and re-examined by the counsel for the petitioners; but counsel can only be heard, and witnesses examined, on behalf of petitioners, in relation to matters referred to in their petitions (*k*). It has been ruled that where a petitioner against a railway bill is admitted to be heard on a petition alleging a preferable line, described particularly in his petition, the engineer to be called in support of such line is entitled to produce, prove, and refer to plans and sections of the suggested line, as made by himself (*l*). Of late years, however, it has not been usual, except in special circumstances, or as arguments against the proposals of the bill, to admit evidence of alternative schemes, which have not been submitted to Parliament as substantive schemes and have not been subject to the usual notices (*m*).

Where there are numerous parties, appearing on separate interests, the committee make such arrangements as they think fit for hearing the different counsel (*n*).

**Examination of witnesses.**—As a general rule, each witness is to be examined, or cross-examined, throughout, by the same counsel. In the Shrewsbury and Birmingham Railway Bill, 1852, the committee resolved that "they must adhere to the rule that the same counsel should go through with the examination of each witness, unless by agreement between the parties, to be approved by the committee, it should be

(*h*) Suppl. to Votes, 1843, p. 131; *ibid.* 1850, pp. 45, 199, etc. Petitioners, however, who pray to be heard against certain clauses and so much of the preamble as relates thereto, have frequently been heard on the preamble.

(*i*) Minutes of Committees on opposed Bills, 1856, Vol. I, p. 65.

(*k*) Glasgow and South Western Railway (No. 2) Bill, and South Wales Railway (Monmouth) Bill, 1853; Suppl. to Votes, 1853, pp. 720, 1339; Minutes of Committees on opposed Bills, 1856, Vol. I; Railway and Canal Bills, p. 56, etc.

(*l*) Midland Railway (Otley and Ilkley Extension) Bill; Cork and Macroom, etc. Bill, 1861; Resolutions of General Committee on Railway and Canal Bills, 1861.

(*m*) Harrow and Rickmansworth Railway Bill, 1874; West Kent Drainage, Sutton Bridge Docks, and Newport (Monmouthshire) Gas Bills, 1875; Oldham Corporation Bill, 1886; Local Government Provisional Orders (No. 7) Bill, 1889; Bilston Commissioners and Newark-upon-Trent Water Bills, 1890; Paignton Gas Bill, 1894, etc. In the following cases the evidence was admitted: Loughborough Local Board and Leicester Corporation Bills (competing), 1886; Airdrie, etc., Water Bill (special circumstances), 1890; Local Government Provisional Orders Bills (No. 13), 1893, (No. 5) 1894, (No. 16) 1896; Hartlepool Gas, etc., Bill, 1898; Broadstairs Gas Bill, 1902.

(*n*) Suppl. to Votes (1852–53), p. 1031.

arranged otherwise, in order to meet the convenience of counsel" (o). Committees have also resolved that no counsel should be permitted to cross-examine witnesses if he had not been present during the examination-in-chief, or to re-examine unless he had been present during the entire cross-examination (p), but in 1891 when (for the first time since the years 1847 and 1861) it was sought to make the first part of this rule effective (q), and the chairman of a committee proposed to enforce it, the proposal was not adopted, nor did it meet with the concurrence of the chairmen of other committees; the latter part of the rule, as to re-examination, has been more closely observed.

**Reply of counsel for the bill.**—When the speeches and evidence in support of petitions against the preamble are concluded, counsel for the bill replies on the whole case. If a petitioner has not called witnesses or put in any document, counsel for the bill has no right of reply; but if a petitioner puts in a document, or even, without putting it in, cross-examines the promoters' witnesses upon it, this generally entitles the promoters to a reply. In some cases this reply is restricted; for example, where the petitioner refers to any Act of Parliament or judgment of a court, or to the decision, proceedings, or report of a committee of either House of Parliament or other similar body, the reply must be limited to the particular document quoted. It has been held that, where there are several petitioners, only one of whom has adduced evidence, the reply of counsel for the promoters must be confined to the case of that one petitioner (r). Any documents, or minutes of evidence on bills of a previous session, which may have been referred to the committee, may be commented on by counsel without objection, and considered by the committee; but reference to such document by a petitioner does not entitle the promoters to a reply.

**Question upon preamble.**—When the arguments and evidence upon the preamble have been heard, the room is cleared, and a question is put, "That the preamble is proved," which is resolved in the affirmative or negative, as the case may be.

In the case of an omnibus bill, or bill for the authorization of several separate undertakings, it is usual to prove the preamble in sections, a question that "so much of the preamble as relates thereto" being put and decided by the committee with regard to each section.

In some cases the committee have resolved that the clauses which the promoters had agreed with the opponents to insert in the bill should be produced before they proceeded to decide on the preamble (s).

**Competing bills.**—Where there are competing bills in the same group, the cases are heard together, and the decision of the committee is postponed until after they have heard the evidence in support of and against all the bills. The procedure adopted is as follows:

(o) Suppl. to Votes, 1852, p. 287.

(p) Suppl. to Votes, 1847, Vol. II, pp. 1457, 1477; Resolutions of General Committee on Railway and Canal Bills, 1861.

(q) City and South London Railway Bill, 1891, MS. Minutes of Evidence, 13 March, p. 7; Central London Railway Bill, 1891, *ibid.*, 4 March, p. 54.

(r) Suppl. to Votes, 1853, p. 720.

(s) North Metropolitan Railway Bill, Suppl. to Votes, 1854, p. 451.

(a) Where there are two or more competing bills :

- (i) The counsel for Bill No. 1 opens his case and calls his witnesses, who are subject to cross-examination by the counsel for Bill No. 2 (and for Bill No. 3), and by the counsel for the other petitioners against Bill No. 1.
- (ii) The case of these petitioners against Bill No. 1 is then heard, their counsel calling evidence and having the right to address the committee either before or after the examination of the witnesses, but not twice.
- (iii) The counsel for Bill No. 2 next opens his case in a statement explanatory of the purposes of his Bill, and calls his witnesses, who are subject to cross-examination by the counsel for Bill No. 1 (and for Bill No. 3), and by the counsel for the other petitioners against Bill No. 2.
- (iv) The case of these petitioners against Bill No. 2 is then heard. When, however, the same petition has been presented against both (or all) the competing bills, the committee instead of hearing the petitioners against each of the bills at separate times, may hear them against all the bills after the counsel for the last of the competing bills has made his opening statement and called his evidence, but before he proceeds to sum up his case in reply (t).

(b) Where there are more than two competing bills.

- (i) Counsel for Bill No. 3 here opens his case in a statement explanatory of the purposes of his bill, and calls his witnesses, who are subject to cross-examination by the counsel for Bills No. 1 and No. 2, and by the counsel for the other petitioners against Bill No. 3.
- (ii) The case of these petitioners against Bill No. 3 is then heard, subject to the proviso contained in (iv) above.
- (iii) The counsel for Bill No. 3 then sums up the case for his own bill as against the other competing bills and in reply to the evidence adduced in opposition to his bill.
- (iv) The counsel for Bill No. 2 then sums up the case for his own bill as against the other competing bill (or bills), and in reply to the evidence adduced in opposition to his bill.
- (v) The counsel for Bill No. 1 then replies on the whole case. The committee then give their decision on the preambles of both (or all) the bills, and subsequently consider the Clauses of the bill (or bills) of which the preamble is declared to be proved (u).

In the case of the Derby Corporation, Sheffield Corporation, and Leicester Corporation Water Bills, 1899, the committee, during their consideration of the three bills, were empowered by an Instruction of the House (passed on the motion of the chairman of the committee) to consolidate the bills ; and accordingly, having formally passed the preambles of the three bills, they struck out all the clauses, and proceeded to consider a consolidated bill

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(t) See Minutes of Proceedings, Group F, Thames River Steamboat Service Bill and Thames Steamboat Trust Bill, 20 April 1904 ; Minutes of Proceedings, Group 5, Invergarry, etc., Railway Bill ; North British, etc., Railway Bill, 11-22 March 1897.

(u) For two competing bills, see Thames Steamboat Trust Bill and Thames River Steamboat Service Bill (Group D), 1903 ; Cork City Railways, etc., Bill and Cork Link Railways Bill (Group 5), 1906 ; Glasgow Boundaries (substituted) Bill and Clydebank Burgh Extension, etc. (substituted) Bill (Group E), 1925 ; Birmingham Extension Bill and West Bromwich Corporation Bill (Group B), 1927. For three competing bills, see Brecon, etc., Railway Bill, Alexandra, etc., Docks and Railway (General Powers) Bill, and Barry Railway Bill (Group 3), 1907.

(against which the parties petitioning against all three bills were heard), and to report this consolidated bill (Derwent Valley Water Bill) to the House (a). Prior to 1897 it was not the practice to permit the counsel for the second (or third) of two (or more) competing bills to make more than one speech (b).

In a few cases, the committee have considered each bill separately, although deferring their decision on the preamble of each bill until the case on the last bill had been concluded (c). Occasionally, too, where the subject-matter of bills in the same group has been partly the same, committees have heard the cases separately, but have deferred their decision till after the conclusion of the last case.

**Decision on preamble.**—The committee call in the parties and acquaint them with their decision regarding the preamble; and, if the preamble be proved, they then go through the bill clause by clause.

**Clauses considered.**—Where petitioners appear against a clause, or propose amendments, they are heard in support of their objections or amendments, as they arise; or opposed clauses may be postponed and considered at a later period in the proceedings, if the committee think fit. In accordance with the rules of the House in committee in dealing with a public bill, when all the clauses of the bill have been disposed of, new clauses may be offered either by members of the committee or by the parties.

**Alternative clauses.**—An alternative clause prepared by petitioners is frequently produced and considered in connection with a clause which is formally before the committee, and which may be amended or negatived in consequence; but if the clause is negatived, the alternative clause strictly should only be added when all the remaining clauses of the bill have been disposed of. Counsel claim the right of reply when they have brought up a new clause; but a distinction should be drawn in this respect between a purely alternative clause and a new clause; such an alternative clause is produced only in support of the argument against, and is virtually an amendment to, a clause already formally before the committee, and it should be treated as an amendment only, without any right of reply; while counsel proposing a new and substantive clause for the consideration of the committee, when no other clause was before it, would not be so limited (d).

**Representations by public departments.**—It has for a long time been the practice that officers of public departments have attended committees on private bills for purposes of reference in connection with reports of their department upon the bill under consideration. The object of these reports is, in general, to secure the adequate protection of Crown or public interests so far as the particular department is concerned with the supervision or administration of these matters; and they may include

(a) C. J. (1899) 229, 267, and Minutes of Proceedings, Group B, 24 April, 7, 8, 9 June 1899.

(b) Cf. Minutes of Evidence, 11 March 1897, before the committee on the Highland Railway (Inverness, etc.), Invergarry etc. Railway, and North British etc. Railway (three competing bills), Group 5, 1897; and the Report of the Select Committee on Private Business, H. C. 378, p. x (1902).

(c) Proceedings of committees, in the Lords, on the London Electric Power Bills, 1905, and on the Penllwyn and other Welsh Railway Bills, 1906.

(d) This rule as to the hearing of counsel on an alternative clause received the assent and approval of the late Mr. Pope, K.C., and the late Mr. Pember, K.C.

recommendations that clauses should be inserted in the bill for such purposes. But, except in cases in which the consent of the Crown may be withheld from a bill, government departments are without any means of enforcing the adoption of their clauses, either by the parties or the committee; and their relations to the committee and Parliament have often been not a little anomalous, since their officers attending a committee on a bill are neither promoters of, nor petitioners against, the bill, nor witnesses called by any of the parties. Indeed, in 1906, representations were made to Mr. Speaker, on behalf of the parliamentary bar, as to the growing tendency on the part of private bill committees to hear statements, or evidence, tendered by officers from government departments without permitting these officers to be cross-examined as are ordinary witnesses called by the parties. Mr. Speaker then laid it down that if officials are called by the committee to speak as to the practice, policy and parliamentary precedent of their department, they are not witnesses or subject to cross-examination, but that if officials appear as witnesses they ought to be sworn as such and be subject to cross-examination. This ruling was made in a memorandum to the Principal Clerk of Committees; and it bore out the opinion that public departments have no right to be heard except upon petition. The difficulty, however, has been to observe the dividing line, where an official is concerned, between speaking as to policy and otherwise in explanation of a department's report on a bill and giving evidence (*e*). The matter has, since 1945, been more clearly regulated by standing orders, committees being restricted by S.O. 136 (p. 930) from hearing any evidence but that adduced by the parties entitled to be heard, and being also limited, under S.Os. 144, 146, 147 and 222, to hearing officers of departments "in explanation" of a report.

In 1858, the Office of Works and Public Buildings was refused a hearing against the Victoria Station and Pimlico Railway Bill, as they had not deposited a petition against the bill, by which the promoters might have been made acquainted with the grounds of opposition (*f*). In 1872 the Treasury obtained the insertion of a clause in the International Communication Bill providing access to Crown property; but on several government departments applying by counsel to the committee to be heard against the bill, the committee decided that it was contrary to the practice of the House to admit parties not appearing in the usual way on petition (*g*). In 1902 counsel informed the committee on the Commercial Gas Bill that he was instructed to appear before them on behalf of the Board of Trade, and offered to call one of the Gas Referees appointed by that department as a witness; but as there was no petition against the bill from the department or from the Gas Referees, nor any direction from the House with regard to calling them, the committee declined to hear them (*h*). In 1871 the Office of Works appeared by counsel on their petition as landowners against the Metropolitan Street Tramway (Westminster and Battersea Park Extension) Bill, and the London

(*e*) This issue was distinctly raised in the proceedings of the Committee on the Bilston Corporation Bill, 1942, in Group A of private bills, see Minutes of Proceedings, Thursday, 21 May 1942, pp. 160-167, in respect of questions put by the committee to officers of the Ministry of Health.

(*f*) Minutes of Committees on opposed Bills, 1858, Vol. II, p. 130.

(*g*) Minutes of Group 2, 1872, Vol. I, p. 95.

(*h*) Minutes of Evidence, Group A, 13 and 14 March 1902.

Street Tramways (Kensington, Westminster, and City Lines) Bill (Group 12). In 1873, the Postmaster General petitioned against the Midland Railway Bill, but the petition was afterwards withdrawn. In the same year he also petitioned against the Deal, Walmer, and Adisham Railway Bill, the South Eastern Railway Bill, the North Metropolitan Tramways Bill, and the London and Aylesbury Railway Bill; and in the two first cases, appearances were entered. In 1893 the Commissioners of Works appeared in the ordinary way on petition against the Clapham Junction and Paddington Railway Bill. In some cases leave has been specially given by the House for departments (although they had not presented a petition) to appear by counsel, etc., before the committee on a private bill, *e.g.* to the Admiralty (South Eastern Railway Bill) (Group 17), 1865 (*i*); Naval Works Provisional Order (Group O), 1901 (*h*); to the Board of Trade, North British Railway Tay Bridge Bill (Select Committee), 1880 (*l*); to the Commissioners of Public Works in Ireland, Canal Rates, etc., Provisional Order No. 11 Bill (Joint Committee), 1894 (*m*); to the War Office, Lee Conservancy Bill (Group B), 1900 (*n*). In 1892 the committee on the Manchester, Sheffield, and Lincolnshire Railway (Extension to London) Bill, received a letter stating that the Department of Woods and Forests was interested in respect of certain Crown lands which would be prejudicially affected by the bill. The committee, in answer, stated that it would be for the convenience of the committee if a report from the department were laid before them, and that they would be prepared to afford the department an opportunity of submitting its views as suggested; and the surveyor to the commissioners accordingly attended for this purpose. In 1909 a mandatory instruction was given to a specially constituted committee on the Great Northern, Great Central, and Great Eastern Railways Bill to hear the Board of Trade and any other government department by counsel and witnesses (*o*).

*Admissible clauses.*—It must be borne in mind that the committee may not admit clauses or amendments which are not within the "order of leave" (see p. 894); or which are not authorized by a previous compliance with the standing orders applicable to them, unless the parties have received permission from the House to introduce certain provisions, in compliance with a petition for additional provision. But if the committee are of opinion that such provisions should be inserted, the further consideration of the bill can be postponed, in order to give the parties time to petition the House for additional provision (see p. 846) (*p*). A committee have refused to entertain a clause which the promoters of a bill had agreed upon with another company and proposed to insert in the bill, even when it appeared that the petition of that company had been withdrawn, on condition of the introduction of that clause. In such cases, however, which are of rare occurrence, a committee have consented to the

(*i*) C. J. (1865) 303.

(*h*) C. J. (1901) 234.

(*l*) C. J. (1880) 317.

(*m*) C. J. (1894) 301.

(*n*) C. J. (1900) 106.

(*o*) C. J. (1909) 103.

(*p*) London and North Western (Northampton Branch) Bill, Suppl. to Votes, 1853, p. 964; and *ibid.* p. 1255; Bradford Tramways, etc., Bill, Suppl. to Votes, 1899, p. 1341; Ossett Corporation Bill, Minutes of Proceedings (Group B), 11 April 1938, C. J. (1937-38) 203.



promoters calling witnesses representing the company concerned (*q*), or has offered to obtain power from the House to hear the company, notwithstanding the withdrawal of their petition (*r*).

*Enforcement of pledges.*—A committee have also inserted clauses compelling a railway company, under penalty of a suspension of its dividends, to apply to Parliament in the next session, for a bill to authorize the construction of a line of railway which the company had pledged itself to make (*s*). The preamble of a bill has also been negatived, on proof that it was a violation of a pledge previously given by a company (*t*).

*Preamble of bill not proved.*—If the proof of the preamble be negatived, the committee report to the House that the preamble has not been proved.

In 1836 the committee on the Durham (South West) Railway Bill were ordered to reassemble, "for the purpose of reporting specially the preamble, and the evidence and reasons, in detail, on which they came to the resolution that the preamble had not been proved" (*u*).

It has been ruled that when a committee have resolved that the preamble of a private bill has not been proved, and ordered the chairman to report, it is not competent for them to reconsider and reverse their decision, but that the bill should be recommitted for that purpose (*a*). This course, however, of recommitting a bill of which the committee have reported the preamble "not proved" is unusual and requires a strong case to be made out for its adoption (*b*).

In 1854 the preambles of two out of three competing railway bills were declared not proved; but the successful bill, after it was reported, having been withdrawn, the two other bills were recommitted, and the preamble of one of them was declared to be proved (*c*).

In 1861, in the case of the Mold and Denbigh Junction Railway Bill, the committee reported that the preamble had not been proved; but all opposition having been subsequently withdrawn, the bill was recommitted to the former committee, who reported the preamble proved, and the bill was passed (*d*).

In 1874, in the case of the Bolton-le-Sands, Warton, and Silverdale Reclamation Bill, the committee having reported that the preamble had not been proved, the bill was afterwards recommitted to the former committee, with an instruction to the committee to strike out of the bill all powers for the compulsory taking of lands, to which any opposition was offered (*e*).

(*q*) Colne Corporation Bill, 1905 (Minutes of Evidence, Police and Sanitary Committee, Vol. XIV, p. 42, 3 April).

(*r*) Thames Tunnel Railway Bill, Minutes of Group 2, 1860, p. 84.

(*s*) South Western Railway (Capital and Works) Act, 1855; Suppl. to Votes, 1855, pp. 251-53. Cf. in this connection, Report of Select Committee on Railways (Ireland) Amalgamation Bills, C. J. (1899) 373-74.

(*t*) Mid-Sussex, etc., Railway Bill (Group 3), 1860.

(*u*) C. J. (1836) 396.

(*a*) C. J. (1857-58) 209; *ibid.* (1924-25) 179, London County Council (Tramways and Improvements) Bill, in which case the committee were instructed to reconsider their decision on the preamble.

(*b*) Cf. the proceedings in the House on the Piccadilly, City, and North East London Railway Bill, 1902, Parl. Deb. (1902) 113, c. 1154.

(*c*) Group 1, Suppl. to Votes, 1854, pp. 175, 415.

(*d*) C. J. (1861-62) 285. The Peterborough Water Bill, of 1875, was a similar case where the promoters' claim to a recommitment was conceded, though it was not proceeded with.

(*e*) C. J. (1874) 174, 217, etc.

In 1902, in the case of an *omnibus* bill—the South Eastern and London, Chatham, and Dover Railways Bill—the promoters not having been able to accept the provisions suggested by the committee in one opposed portion, “Railway No. 1,” of the bill, the committee reported that the preamble of the whole bill, including other and unopposed portions, was not proved. The bill was thereupon recommitting with an instruction to the committee to reconsider their decision upon so much of the preamble as did not relate to Railway No. 1; and the committee subsequently reported that they had done so and had found the preamble proved except in so far as it related to Railway No. 1 (*f*). In several other cases, where compromises have afterwards been effected, and the promoters have consented to make amendments, the bills have been recommitting for that purpose (*g*).

In 1913, the Local Legislation Committee decided that so much of the preamble of the East Ham Corporation Bill as related to Part II, which constituted East Ham a county borough was not proved. The chairman in announcing the committee’s decision stated that they would welcome the reconsideration of their decision by the House in view of the novelty and importance of the questions raised. The bill was recommitting to the same committee with an instruction to reinsert these provisions, if they thought fit, either with or without modifications, and the committee reinserted the powers asked for (*h*).

In the same year in the case of the Electric Lighting Provisional Orders (No. 6) Bill [Lords] the promoters decided owing to the lateness of the session not to proceed with one of the orders contained in the bill relating to Kingstown. The committee on the bill reported to this effect, and the House thereupon referred the bill back to them for the purpose of reinstating the Kingstown order, gave them power to divide the bill into two bills dealing with the opposed and unopposed orders respectively, and ordered that the bill for confirming the opposed order should stand referred to the Committee of Selection (*i*).

Where it has appeared that the promoters of a bill were debarred by an agreement from executing the works proposed by it, the committee have decided that the bill could not be further proceeded with (*k*).

In the Kingstown Township Bill, 1873, while the case for the promoters was proceeding, it was made known that the town commissioners of Kingstown, by whom the bill was promoted, had been restrained by injunction from proceeding further with the bill, on the ground that they had failed to comply with the requirements of the Towns Improvement Act, 1847 (ss. 132, 133, and 142), and were not therefore entitled to come to Parliament. The commissioners, however, had also signed the petition for the bill, as individuals and claimed to proceed with the bill in that capacity; but the committee resolved, “That the counsel for the promoters having stated that the commissioners had withdrawn from the promotion of the bill, the committee decided that they ought not to proceed further with the bill, and that they would report to the House that the preamble had not been proved.” This decision was founded, it is believed, upon the determination of the

(*f*) C. J. (1902) 306, 314, 330, 343; Parl. Deb. (1902) 110, c. 759. And cf. the proceedings on the North Cornwall Railway Bill, 1894, C. J. (1894) 103, 108, 121, and Dublin and Central Ireland Electric Power Bill, 1908, *ibid.* (1908) 132, 201, 212.

(*g*) C. J. (1874) 225; *ibid.* (1877) 177.

(*h*) C. J. (1913) 189, 283, 293; H. C. Deb. (1913) 55, c. 2132; H. C. 267, pp. iii, xxi, xxvi (1913).

(*i*) C. J. (1913) 305, 337, 354; H. C. Deb. (1913) 56, c. 1374.

(*k*) Devon Central Railways Bill, 1861 (Group 3, Minutes, p. 90); North British Railway (General Powers) Bill, 1881 (Group 12, Minutes, p. 289).

committee not to favour any evasion of the Towns Improvement Act, and of the injunction founded upon it (*l*). Attempts were afterwards made, without success, to obtain a rehearing, but the committee adhered to their determination.

**Alterations in preamble (S.O. 143).**—Alterations may be made in the preamble, subject to the same restriction as in the case of other amendments, that nothing be introduced inconsistent with the "order of leave," or with the standing orders of the House applicable to the bill. Such amendments, however, are to be specially reported.

**Award of costs in certain circumstances to petitioners against or promoters of a private bill.**—In 1865 the important principle of restraining vexatious litigation by awarding costs was first introduced. Under the Parliamentary Costs Act, 1865 (28 & 29 Vict. c. 27), when a committee (in either House of Parliament) on a private bill shall decide that the preamble is not proved, or shall insert any provision for the protection of any petitioner, or for the protection of such petitioner strike out or alter any provision of the bill, and further unanimously report, with respect to any or all of the petitioners against the bill that such petitioner or petitioners have been unreasonably or vexatiously subjected to expense in defending their rights, such petitioner or petitioners shall be entitled to recover costs from the promoters (*m*). On the other hand, when a committee unanimously report that the promoters have been vexatiously subjected to expense by the opposition of petitioners, they shall be entitled to recover costs from those opponents (*n*); but it is provided that no landowner who *bonâ fide*, at his own sole risk and charge, opposes a bill which proposes to take any part of his property, shall be liable to any costs in respect of his opposition.

It has been held that the Act has been duly complied with, if all the members of the committee present at the hearing of the case, provided that they form a quorum, have unanimously reported in the manner prescribed for entitling parties to recover costs (*o*).

(*l*) Group K, 1873 (Minutes, 7 May).

(*m*) Costs granted to petitioners: Great Western Railway Bill, C. J. (1866) 328; Brecon, etc., Railway Bill, *ibid.* (1867) 109; Thames Embankment, etc., Bill, *ibid.* (1867-68) 193; Stockton-on-Tees, etc., Improvement Bill, *ibid.* (1868-69) 149; Great Eastern, etc. (Metropolitan Railways), Bill, *ibid.* (1870) 93; North Eastern Railway (Additional Powers) Bill, *ibid.* (1874) 126; Metropolitan Railway Bill, and North British Railway (General Powers) Bill, *ibid.* (1881) 102, 191; Hull Extension, etc., Bill, *ibid.* (1882) 177; Great Eastern Railway (General Powers) Bill and Swindon, Marlborough, and Andover Railway Bill, *ibid.* (1883) 183, 198; Sunderland, etc., Water Bill, and Metropolitan Outer Circle Railway (Extension of Time) Bill, *ibid.* (1890-91) 161, 390; Dublin Southern District Tramways Bill, *ibid.* (1893-94) 467; Manchester, Sheffield, and Lincolnshire Railway Bill, *ibid.* (1896) 187; Great Northern Railway (No. 1) Bill, *ibid.* (1902) 197; Oldham Corporation Bill, *ibid.* (1909) 173; Newcastle-upon-Tyne Corporation Bill, *ibid.* (1911) 307; Sunderland Corporation Bill, *ibid.* (1934-35) 242.

(*n*) Costs granted to promoters: North British Railway (Coatbridge, etc.) Bill, C. J. (1866) 327; Hull Docks Bill, *ibid.* (1867) 108; London, Blackwall, etc., Railway Bill, *ibid.* (1870) 93; Tivy Side Railway Bill, *ibid.* (1872) 212; Ely and Bury, etc., Railway Bill, *ibid.* (1875) 319; Skegness, etc., Tramways (Abandonment) Bill, *ibid.* (1886) 206; Folkestone, Sandgate, etc., Tramways Bill (in which case the petitioners had been offered a protective clause by the committee), *ibid.* (1890-91) 139 and Minutes of Evidence, (Group 2), 5 and 6 March 1891; Bank of Bolton Bill, C. J. (1895) 231; Buxton Urban District Council Bill, *ibid.* (1902) 275.

(*o*) Minutes of the Police and Sanitary Committee (consisting of nine members, with a quorum of five), Lancaster Corporation Bill, 1888, etc.

**Award of costs in case of Provisional Order Bills.**—By section 2 of the Parliamentary Costs Act, 1871, committees (in either House) upon bills for confirming provisional orders may award costs in like manner, and under the same conditions, as in the case of a private bill (*p*). In the case, however, of certain provisional orders, granted under the Allotments (Scotland) Act, 1892, the Public Health (Scotland) Act, 1897, and the Ancient Monuments Consolidation and Amendment Act, 1913, and also in the case of a joint committee under the Private Legislation Procedure (Scotland) Act, 1936 (see p. 995), a question of costs is decided by a majority of the committee to whom the confirming bill may be referred (*q*).

In any case where costs are awarded, special mention of the award is made in the Report on the bill, which is endorsed with the words " Costs awarded " and is ordered to be printed. The costs awarded by a committee have to be taxed by the Taxing Officer of the House (see pp. 868-69).

**Applications for costs not entertained by committees.**—Although, since 1865, such costs have been awarded in numerous cases, they have more frequently been refused ; and in other cases, owing to the circumstances in which it has been made, the application for costs has not been entertained by a committee. In one case, the promoters having informed the committee on a bill, in the Commons, that it was not their intention to proceed with it (*r*), a petitioner applied to the committee to report that, the promoters not having adduced evidence, the preamble was not proved, and to consider an application for costs. The committee, however, determined to report that the parties had stated that it was not their intention to proceed with the bill, and decided that the question of costs could not consequently be entertained (*s*).

In 1899, in the case of the London and North Western Railway (New Railways) Bill, the committee found that the preamble, in so far as it related to certain railways, was proved, subject to certain terms desired by petitioners ; but the promoters, in preference to accepting the conditions imposed, withdrew that portion of the bill, and the committee thereupon acceded to an application for costs made by the petitioners (*t*). In the case of the Local Government Provisional Orders (No. 15) Bill, 1895, on one of the orders being withdrawn by the parties promoting it, costs were granted to petitioners (*u*). In the case of the North Staffordshire Railway Bill, 1879, the promoters, in the " filled-up " bill, had struck out certain provisions objected to by petitioners, who nevertheless applied for costs ;

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(*p*) Costs granted to petitioners : Local Government Provisional Orders (Atherton, etc.) Bill, C. J. (1877) 426 ; Tramways Orders Confirmation (No. 2) Bill, *ibid.* (1878) 258 ; to promoters : Electric Lighting Provisional Orders (No. 3) Bill, *ibid.* (1912-13) 279.

(*q*) Costs granted to a petitioner : Ancient Monuments Preservation Order Confirmation (No. 1) Bill, L. J. (1914) 208. Similar powers were given to committees on bills to confirm provisional orders granted under the Allotments Act, 1887 (since repealed), and Parts I and II of the Housing of the Working Classes Act, 1890. Costs granted to promoters : Allotments Provisional Order Bill, C. J. (1890-91) 368.

(*r*) Cf. *infra*, p. 947. (Parties not proceeding with their bill.)

(*s*) Abbotsbury Railway Bill, 1873. And cf. also Portsea Island Reclamation Bill, 1871.

(*t*) C. J. (1899) 209.

(*u*) C. J. (1895) 330.

but the committee whilst deciding that the alterations so made were technically their own, refused the application (a).

In 1883, the South Kensington Market Bill was withdrawn in the House on the first day appointed for its consideration by a committee, and parties who had petitioned against it applied for costs; but the committee, not having considered the bill, decided that they had no power to grant costs. A similarly unsuccessful application was made in 1898, by petitioners against the Taff Vale Railway Bill, which was withdrawn by the promoters after the appearances had been entered and parties were in attendance before the committee (b).

In 1880, before the committee, in the Commons, upon the Pier and Harbour Provisional Orders Bill, no parties having appeared in support of the Weymouth Pier Order, certain petitioners applied for costs against the promoters; but the committee decided that, as the consideration of the scheme had not been entered upon, the case did not come within the words of the Act as to the granting of costs (c). In another case, the only petitioners against a bill did not appear before the committee by whom it was considered in the Commons, and the promoters applied for costs against them; but the committee decided that, as the bill had to be referred back as unopposed for consideration by the committee on unopposed bills, they were not in a position to hear evidence in proof of the preamble, nor, consequently, to entertain an application for costs (d).

**Summons of witnesses before private bill committees.**—The attendance of witnesses before select committees has already been described (see p. 588). The power given to those committees of sending for persons, papers, and records is not, however, entrusted to ordinary committees on private bills (e). The parties are, by S.Os. 127 and 134, given the right to tender evidence and are generally able to secure the attendance of their own witnesses, without any summons or other process, and a large proportion of all the witnesses examined attend professionally. When, however, it becomes necessary to compel the attendance of an adverse or unwilling witness, or of any official person who would otherwise be unable to absent himself from his duties, application is made to the committee, who, when satisfied that due diligence has been used, that the evidence of the witness is essential to the inquiry, and that his attendance cannot be secured without the intervention of the House, direct a report to that effect to be made to the House (f), upon which an order is made for the witness to attend and give evidence (g), or to attend and produce particular documents (h), before the committee. The limitation imposed

(a) Minutes of Group 4, 14 May 1879.

(b) Minutes of Group 4, 15 June 1898.

(c) 34 & 35 Vict. c. 3; and Minutes of Group E, Vol. II, p. 171, 24 June, 1880.

(d) North Metropolitan Electric Power Supply Bill, 1905; Group L (Minutes of Committees, Vol. II, 6 July). In the Lords—by an express provision in the standing orders—the committee are not precluded from requiring proof of the preamble of a bill against which parties have not appeared, should an application for costs be made (see S.O. 113 of that House).

(e) In 1896 a motion to give a private bill committee this power was made but was withdrawn, London County Council (Vauxhall Bridge Tramways) Bill, C. J. (1896) 68–69.

(f) This report for the attendance of a witness on an opposed bill is made by the Chairman of Ways and Means in cases where the committee on the bill has not yet met, C. J. (1901) 78, 121, 128; *ibid.* (1921) 109; or has adjourned, *ibid.* (1899) 265; *ibid.* (1900) 290; *ibid.* (1905) 288, etc.

(g) C. J. (1871) 228 (for attendance of a prisoner); *ibid.* (1872) 99; *ibid.* (1921) 94; *ibid.* (1924–25) 278.

(h) C. J. (1874) 98; *ibid.* (1924–25) 333; *ibid.* (1929–30) 276, 278 (where the order was subsequently discharged).

by S.O. 136 on the committee's power to call for evidence has already been noticed (p. 930).

*Examination upon oath.*—By the Parliamentary Witnesses Oaths Act, 1871, any committee of the House of Commons is empowered to administer an oath to witnesses examined before it (*i*); and witnesses before opposed private bill committees are examined on oath. In one case the committee made a special report stating that, in their opinion, a witness had been guilty of perjury (*k*).

*Duties of committee when reporting private bill.*—Besides the matters, already referred to (see pp. 924-30), which are required by the standing orders of the House of Commons to be reported upon by a committee, there are particular duties of the chairman and of the committee on every private bill (whether opposed or unopposed) as to recording the proceedings of the committee and reporting them to the House, which are also distinctly explained in the standing orders.

*Plan, etc., to be signed by chairman (S.O. 140).*—"Every plan and book of reference thereto, which is produced in evidence before the committee upon a private bill (whether the same has been previously lodged in the Committee and Private Bill Office or not), shall be signed by the chairman of such committee, with his name at length; and he shall also mark with the initials of his name every alteration of such plan and book of reference which shall be agreed upon by the said committee; and every such plan and book of reference shall thereafter be deposited in the Committee and Private Bill Office."

*Committee bill and clauses to be signed by chairman (S.O. 141).*—"The chairman of the committee shall sign, with his name at length, a printed copy of the bill (to be called the committee bill), on which the amendments made in the committee are to be fairly written; and also sign, with the initials of his name, the several clauses added in the committee, and each page of the bill whereon an amendment has been made or the place where a new clause is to be inserted is indicated."

*Chairman to report on allegations of bill, etc. (S.O. 142).*—"The chairman of the committee shall report to the House, that the allegations of the bill have been examined, and, except where the parties have acquainted the committee that it is not their intention to proceed with the bill, whether the same have been found to be true."

*Chairman to report the bill in all cases (S.O. 143).*—"Where the committee have agreed to the preamble of the bill, and have gone through the several clauses, the chairman of the committee shall report the bill to the House, and, where any alteration has been made in the preamble of the bill, he shall report such alteration, together with the grounds of making it."

"Where the committee have not agreed to the preamble of the bill, or where the parties have acquainted the committee that it is not their intention to proceed with the bill (*l*), the chairman shall make a report to the House to that effect when reporting the bill."

(*i*) See *supra*, p. 592. Committees of the House of Commons had been previously empowered, by s. 1 of the Parliamentary Witnesses Act, 1858, to administer an oath to witnesses upon a private bill, and, by s. 3 of the Parliamentary Costs Act, 1871, to witnesses upon a provisional order bill. Both of these sections were rendered unnecessary, and were repealed, by the Parliamentary Witnesses Oaths Act, 1871. As to the power of committees in the Lords to administer oaths, see s. 2 of the Parliamentary Witnesses Act, 1858, and *infra*, pp. 963-64.

(*k*) C. J. (1860) 230.

(*l*) Cf. p. 947.

**Minutes of evidence.**—Under S.O. 127 (3), which paragraph was added in 1945, and incorporated in the standing orders the resolution of the House of 1864 (see below), the minutes of evidence taken before a committee on an opposed bill are to be printed at the expense of the parties, in accordance with such directions as may be given by Mr. Speaker. By the Speaker's order of 2 April, 1912, as amended in March, 1945, the agent for the promoters of an opposed private bill is required to print the minutes of evidence and proceedings on the bill, and to deposit a copy at the Committee and Private Bill Office. The agent may, at the end of a day's sitting, formally ask leave of the committee to dispense with printing, and, if that leave is granted, he is not required to print. The expense of the printing is to be divided among the several parties in such proportions as may be agreed upon.

Before 1912, the arrangements for printing conformed to a resolution of the House of 16 February 1864, "That the minutes of evidence on opposed private bills be printed at the expense of the parties, whenever copies of the same shall be required" (*m*). Occasionally when an opposed private bill has been referred to a specially constituted committee, the parties have been given leave to print the evidence day by day from the committee clerk's copy, if they thought fit (*n*).

In the case of "hybrid" bills, to which S.O. 127 (3) does not extend, special leave has to be given for the parties "to print the minutes of evidence day by day, from the committee clerk's copy, if they think fit" (*o*).

Minutes of evidence taken before committees in former sessions, or in the same session, are sometimes referred to committees on private bills (see p. 925).

**Special Reports from Private Bill Committees.**—If matters should arise in the committee, apart from the immediate consideration of the bill referred to them, which they desire to report to the House, the chairman should move that leave be given to the committee "to make a special report" (*p*). The House may also instruct the committee on a

(*m*) C. J. (1864) 71.

(*n*) C. J. (1894) 109; *ibid.* (1899) 143.

(*o*) Metropolis Water Bills, 1851, 1852, C. J. (1851) 315; and *ibid.* (1852) 141; Metropolis Management and Building Acts Amendment Bill, 1878; *ibid.* (1878) 104; Post Office Sites Bill, 1889, *ibid.* (1889) 423, etc.

(*p*) Special reports from committees on opposed private bills: concerning the constitution of one public body as dock trust (Liverpool Docks, Birkenhead, etc., Docks Bill, 1855, and Mersey, etc., Docks Bill, 1857), C. J. (1854-55) 298; and *ibid.* (1857) 267, 269; concerning parliamentary deposits, *ibid.* (1865) 285, 303; as to forged signatures, *ibid.* (1878-79) 176; recommending legislation or inquiry upon particular questions, *ibid.* (1895) 119, and *ibid.* (1904) 268; as to electrical traction (tramways) in London, *ibid.* (1898) 281; as to electrical undertakings and Board of Trade, *ibid.* (1902) 183; as to participation of railway companies in service of road transport, *ibid.* (1922) 195; giving reasons for the rejection of a bill, *ibid.* (1929-30) 325. From a Joint Committee on a provisional order bill, as to conditions of borough extension, *ibid.* (1920) 276. In the case of the Devon and Dorset Railway Bill, 1853, the committee made a special report, explaining that they had rejected that bill in expectation of a preferable line of railway being proposed to Parliament, in the next session, by another company, C. J. (1852-53) 637. And, for examples of other special reports from private bill committees, as to their treatment of a bill, or as to special circumstances, etc., see C. J. (1852-53) 709; *ibid.* (1871) 199; *ibid.* (1919) 221; *ibid.* (1924) 258; *ibid.* (1928-29) 209, 241; *ibid.* (1933-34) 138 (Committee on Unopposed Bills); *ibid.* (1935-36) 146, 243, Special Report on Bilston Corporation Bill from committee on Group A, *ibid.* (1941-42) 113.

private bill to make a special report. Where a private bill has been committed to a select committee, who are empowered to send for persons, papers, and records, the motion for leave to make a special report is not necessary (q).

In 1846, in the case of the Edinburgh and Leith Waterworks Bills, the committee reported, that in view of special circumstances which they submitted to the House, the consideration of both bills should be suspended, in order to afford opportunity for the introduction of another bill; and they recommended, "That every facility, consistent with the forms of the House, should be given to such a bill during the present session" (r).

The case of the London and Brighton Railway Bills of 1837 was of a very unusual character and deserves particular notice. The bills for making distinct lines of railway to Brighton had been referred to the same committee, when an unprecedented contest arose among the promoters of the rival lines, and at length it was apprehended that the preamble of each bill would be negatived, in succession, by the combination of three out of the four parties against each of the lines in which the three were not interested, and on which the committee would have to determine separately. This result was prevented by an Instruction to the committee "to make a special report of the engineering particulars of each of the lines, to enable the House to determine which to send back for the purpose of having the landowners heard and the clauses settled." This special report was made accordingly; but the House, being unable to decide upon the merits of the competing lines, agreed to address the Crown to refer the several statements of engineering particulars to a military engineer. On the report of the engineer, appointed in answer to this address, the House instructed the committee to hear the case of the landowners upon the line called the Direct line (s).

Report that "Parties do not proceed," etc.—If parties acquaint the committee that they do not desire to proceed further with the bill (t), this fact is reported to the House; and an order is then made that the bill be withdrawn (u) or, merely, that the report do lie upon the table (a). In 1902 a committee having thus reported that the parties did not intend to proceed with their bill, notice was given of a motion to recommit the bill; but the Speaker ruled that such a motion would be out of order, on the ground that a private bill was the property of the promoters and that the House could not compel them to proceed with it against their wish (b).

After the preamble of a bill has been proved, the promoters have abandoned

(q) See p. 608 as to special reports from select committees.

(r) C. J. (1846) 732.

(s) C. J. (1837) 356, 417, 519, 529.

(t) In 1824 a report was made that, from the protracted examination of witnesses, the promoters of the South London Docks Bill desired leave to withdraw their bill, and that the committee had instructed the chairman to move for leave (which was accordingly given) to lay the minutes of evidence before the House (C. J. (1824-25) 445, 449).

(u) C. J. (1850) 510; *ibid.* (1876) 372.

(a) C. J. (1874) 98; *ibid.* (1894) 184; *ibid.* (1902) 443; *ibid.* (1904) 97, 123. For a special report relative to a bill with which the promoters did not proceed, see C. J. (1922) 195.

(b) London United Electric Railway Bill, C. J. (1902) 443; and Mr. Speaker's private ruling 29 October 1902. See also Parl. Deb. (1905) 150, c. 329; and *supra*, p. 825.



the bill rather than consent to the introduction of amendments insisted upon by the committee (c).

**Adjournment of committees on opposed bills to be reported (S.O. 125).**—It is the duty of every committee to report to the House the bill that has been committed to them, and not by long adjournments to withhold from the House the result of their proceedings ; and therefore it has been prescribed by standing order that every committee on an opposed private bill shall report specially to the House the cause of any adjournment over any day on which the House shall sit (d). If any attempt of this nature be made to defeat a bill, the House will interfere to prevent it. Thus, in 1825, the committee on a private bill having adjourned for a month, was "ordered to meet to-morrow, and proceed on the bill" (e) ; and again, on 23 March 1836, the House being informed that a committee had adjourned till 16 May, ordered them "to meet to-morrow, and proceed on the bill" (f). It should be remembered, moreover, that frequent or long adjournments may put the parties to considerable expense and inconvenience, and for this reason also they should be avoided as far as possible.

**Committees revived.**—If a committee adjourn, without naming another day for resuming their sittings (g), they have no power of reassembling without an order from the House, giving the committee leave to sit and proceed on a certain day (h).

#### PROCEEDINGS IN THE CASE OF PRIVATE BILLS BEFORE SPECIALLY CONSTITUTED COMMITTEES

In the case of a private bill that has been referred, in departure from the ordinary procedure, to a specially constituted committee nominated (like the committee on a hybrid bill) partly by the House and partly by the Committee of Selection, or otherwise specially constituted (see pp. 915-18), the proceedings are generally similar to those of ordinary private bill committees (i). But in such a committee the chairman—in accordance with a resolution of the House of 25 March 1836 and with the established rules of Parliament regarding select committees (see p. 584)—can only vote when there is an equality of voices, and its members do not sign the declaration required by S.O. 120 (see p. 912), nor are they subject to the requirements of the standing orders as to attendance on

(c) Glasgow Waterworks Bill, 1848 (Minutes, p. 97) ; Plymouth Corporation Bill, 1903 (in House of Lords), etc. And for a case where the promoters of an *omnibus* bill decided not to proceed with one portion of which the committee had found the preamble proved subject to conditions, see London and North Western, etc. (New Railways) Bill, C. J. (1899) 209.

(d) Cf. e.g. Reports of Adjournments, C. J. (1890-91) 371 ; *ibid.* (1935-36) 136.

(e) C. J. (1825) 474.

(f) C. J. (1836) 195. Cf. also the debate on the instruction, directing the committee on the Manchester Ship Canal Bill to report the bill before a specified day, C. J. (1887) 291 ; Parl. Deb. (1887) 316, c. 24-34.

(g) C. J. (1902) 401, 440.

(h) As to leave given to committees to sit on a day on which the House is not sitting, see *supra*, "Select Committees," p. 587 ; and C. J. (1897) 337 (leave given to committee on Group 9, to sit on a Saturday), etc.

(i) Such committees, in common with private bill committees, have the power of examining witnesses on oath (*supra*, p. 945).

private bill committees (*k*) (see p. 913). The practice of referring bills of a certain class, already mentioned, to committees so constituted, has of late years greatly increased. There are advantages attaching to such committees; but, on the other hand, the judicial character of the tribunal is impaired by the absence of those regulations by which the continuity and impartiality of the tribunal are preserved (*l*).

## REPORT OF BILL

EVERY PRIVATE BILL AS AMENDED IN COMMITTEE TO BE PRINTED  
AND DELIVERED (S.O. 179)

When the report has been made out and agreed to by the committee, the committee clerk delivers in to the Committee and Private Bill Office "the committee bill" (p. 945). In strict conformity with this authenticated copy, the bill, as amended by the committee, is required by the standing orders to be printed at the expense of the promoters in the same style as the House copy deposited under S.O. 165 (p. 894). When printed, copies of the amended bill must be delivered to the Vote Office, for the use of members, three clear days at least before the consideration of the bill, but not before the report of the bill has been made to the House; and agents, when they give notice in the Committee and Private Bill Office of the day for the consideration of the bill, must produce a certificate from the Vote Office of the delivery of the amended printed bill on the proper day (*m*). The copy of the amended bill, printed and covered in like manner as the House copy, must be deposited in the Committee and Private Bill Office and takes the place of the former House copy.

## BILLS WITHDRAWN OR REFERRED TO EXAMINER AFTER REPORT

In some cases the alterations made by the committee have been so numerous and important as almost to constitute the bill a different measure from that originally brought before the House. In such cases the House has sometimes required the bill to be withdrawn and another bill presented, which has been referred to the Examiners. Thus, on 21 May 1849, on the report of the Holme Reservoirs Bill, notice being taken that almost the whole of the bill as brought in had been omitted, and a new set of clauses introduced, the bill was ordered to be withdrawn (*n*). But, unless the case be one of great irregularity, the later

(*k*) In 1900, when certain electric power bills were specially committed to a select committee of seven members, nominated by the Committee of Selection, an order was made by the House that the committee should be subject to the standing orders relative to the proceedings of committees on opposed bills (except that fixing the number of members), C. J. (1900) 101; Parl. Deb. (1900) 80, c. 206, 900, 1053-59.

(*l*) In the committee on the Southampton Docks Bill, 1892, one member was a director of the dock company, and another held shares in the South Western Railway Company (the purchasing company); but it was decided by the authorities of the House that the constitution of the committee was perfectly regular. In the case of the London County Council (General Powers) Bill, and London Improvements Bill, 1893, a member of the London County Council was a member of the committee on both bills; see debate on the latter bill, Parl. Deb. (1893) 14, c. 30, 39. Cf. also the debate regarding the committee on Electric Power Bills, 1900, Parl. Deb. (1900) 80, c. 1053-59.

(*m*) Order of the Clerk of the House, 30 March 1844.

(*n*) C. J. (1849) 320, 382.

and better practice has been to refer the bill as amended to the Examiners, "to inquire whether the amendments involve any infraction of the standing orders" (o). If the Examiner reports that there is no infraction of the standing orders, the bill proceeds without further interruption; but if he reports that there has been such an infraction his report, together with the bill, will be referred to the Standing Orders Committee who report whether the standing orders ought or ought not to be dispensed with (p).

In the case of hybrid bills similar motions, to refer the bill as amended in committee to the Examiners, have been made. In the case of the Smithfield Market Bill, 1860, such a reference was refused (q), in the case of the Metropolitan Foreign Cattle Market Bill, 1868, it was granted (r). In the case of the Toll Bridges (River Thames) Bill, 1876, the bill underwent so many important alterations in committee as to be substantially a new bill, and its opponents urged that it ought to be withdrawn. But the second reading of the bill had been postponed, while a select committee was considering the whole subject-matter of the bill; and when that committee had reported, the bill was read a second time and committed; and the report of the committee (together with other reports upon the same subject), was referred to the committee on the bill. These proceedings were regarded by the committee as in the nature of an Instruction, and amendments had therefore been made, of a comprehensive character, founded upon previous inquiries and recommendations. Under these exceptional circumstances, the Speaker suggested that the House would probably consider that the committee had not so far exceeded its powers as to require the withdrawal of the bill. But as private rights and interests were concerned in the bill and in the amendments made by the committee, he recommended that it should be referred to the Examiners. This was accordingly done; and though it appeared that in respect of some of the amendments the standing orders had not been complied with, the Standing Orders Committee reported that they ought to be dispensed with, and the bill was allowed to proceed through all its further stages (s).

#### RECOMMITTAL OF A PRIVATE BILL-(t)

In some cases private bills, reported from a committee, have been recommitted; and, unless the House has otherwise directed, the re-committed bill has stood referred, in the ordinary way, to the Committee of Selection (u). Usually, however, when any private bill is recommitted,

(o) As to the case of a provisional order bill referred, as amended, to the Examiners, see C. J. (1901) 302, 307, 318; and *infra*, p. 980.

(p) Dublin Central Tramways Bill, C. J. (1877) 366, 378, 399; and Milford Docks Bill, *ibid.* (1874) 141, 142, 153 (in which case the bill was referred with an instruction to the Examiners to report whether a specified standing order had been complied with, in reference to clauses inserted in committee).

(q) C. J. (1860) 370.

(r) C. J. (1867-68) 223.

(s) C. J. (1876) 354, etc.; Parl. Deb. (1876) 230, c. 1679-80; Mr. Speaker Brand's Note-book.

(t) See also p. 954 for recommitment on third reading.

(u) Dublin Corporation Bill, C. J. (1896) 406, 409, in which case the minutes of evidence before the former committee were referred to the committee on the re-committed bill; Edinburgh Boundaries Extension and Tramways Bill [Lords], with an Instruction to the committee to have regard to the findings of a joint committee on a provisional order bill with regard to borough extensions, C. J. (1920) 293. In this case in committing the bill to the former committee, the Committee of Selection stated that it was not proposed to take further evidence but that counsel on either side would be heard, Private Business (1920), p. 433.

it is referred specifically "to the former committee (a); and no member can then sit, unless he had been duly qualified to serve upon the original committee on the bill (b). In some exceptional cases a private bill has been recommitted to a Committee of the whole House (c), or to a select committee nominated partly (d) or entirely (e) by the House. Unless the bill be recommitted by the House with express reference to particular provisions (f), the whole bill is open to reconsideration in committee (g). By S.O. 199 (see p. 918), one clear day's notice is to be given in the Committee and Private Bill Office of the meeting of the committee on a recommitted bill; and a "filled-up" bill, as proposed to be submitted to the committee, on recommitment, is to be deposited by the agent in the same office, two clear days before the meeting of the committee (h).

#### PROCEEDINGS ON AND AFTER REPORT OF PRIVATE BILL (S.O. 178)

By S.O. 178—

"Every private bill reported from a committee, if amended in the committee or if the committee report that the allegations contained in the preamble have not been proved to their satisfaction or that the parties promoting the bill have stated that it is not their intention to proceed therewith, shall be ordered to lie upon the table; but, if not amended in committee and the committee have not reported as aforesaid, it shall be ordered to be read the third time."

The bill reported to the House is a copy of the bill as amended in committee. The report upon a railway or tramway bill, or upon a bill promoted by a local authority, or a bill upon which an Instruction has been given by the House or a report made by a government department, is ordered to be printed, and is made available to members who apply for it. Tramroad bills are treated as railway bills. The minutes of proceedings of committees are also sometimes ordered to be printed (i).

**Interval between report and consideration of bill (S.O. 181).—**In the case of a private bill ordered to lie upon the table not less than three clear days are required to intervene between the report and consideration of the bill.

**Bill as amended laid before Chairman of Ways and Means, etc. (S.Os. 86, 180, 181).—**Three clear days, at least, before the con-

(a) See pp. 940-41 for cases in which bills have been recommitted for the reconsideration of the committee's decision.

(b) Leave has been given in some such cases, for the committee to sit and proceed with two members, C. J. (1887) 166; *ibid.* (1894) 278; or with a quorum of two, *ibid.* (1856) 256. On the Warrington, etc., Railway (recommitted) Bill, 1853, the committee had leave to proceed with three members, but another was afterwards added by the House, C. J. (1852-53) 690, 698.

(c) Sheffield Corporation Bill, C. J. (1900) 358; Farmer's Estate Society (Ireland) Bill, *ibid.* (1847-48) 782. And see *supra*, p. 899.

(d) Lochearnhead, etc., Railway Bill, 1897 (recommitted to a select committee nominated partly by the House and partly by the Committee of Selection), C. J. (1897) 223-24.

(e) C. J. (1901) 374, 381, 389; *ibid.* (1907) 416, 422.

(f) Tyneside Tramways, etc., Bill, C. J. (1904) 278; Corporation of London (Bridges) Bill, *ibid.* (1911) 272; Manchester Corporation (General Powers) Bill [Lords] in respect of a clause, with an instruction to strike out the clause, *ibid.* (1921) 342; Nottingham Corporation Bill [Lords] in respect of two clauses, *ibid.* (1924-25) 354.

(g) C. J. (1901) 192.

(h) See, however, C. J. (1924-25) 354, where these S.Os. were suspended.

(i) Regent's Canal and Railway Bill, C. J. (1882) 254.

sideration of a bill, a copy of the bill, as amended in committee, is to be laid by the agent before the Chairman of Ways and Means and the Counsel to the Speaker, and is also to be deposited with the public departments referred to in S.O. 86.

If a bill does not contain the several provisions required by the standing orders or contains any provisions which contravene standing orders, the Chairman of Ways and Means shall, before the bill is considered, so inform the House or signify the same in writing to the Speaker.

**Notice of consideration of bill (S.O. 201).**—Not less than one clear day's notice, in writing, is required to be given by the agent for the bill, in the Committee and Private Bill Office, of the day proposed for the consideration of every private bill ordered to lie upon the table.

**Rules as to amendments proposed to be moved on consideration, etc., of bill.**—When it is intended by the promoters to bring up any clause, or to propose any amendment on the consideration of any private bill ordered to lie upon the table—or any verbal amendment on the third reading—notice is required, under S.O. 204, to be given, in the Committee and Private Bill Office, not less than one clear day previously. S.O. 87 provides that, on the day on which notice is given, the clause or amendment is to be laid before the Chairman of Ways and Means and the Counsel to the Speaker. Under S.O. 183, where the Chairman of Ways and Means considers that prints of an amendment or new clause should be made available to members, he may give directions for the printing thereof, and these directions may include a requirement that any clause proposed to be amended shall be printed *in extenso*, with every addition or substitution in distinctive type, and the omissions included in brackets, and underlined. The expense of printing is borne by the party offering the clause or amendment. If any clause or amendment is proposed by a Member, independently of the parties concerned in the bill, he may either give notice to the Clerks at the Table or to the Committee and Private Bill Office. In either case, such notice appears in Private Business.

By S.O. 182, no clause or amendment may be offered by the promoters on the consideration of a bill, if the Chairman of Ways and Means has informed the House or signified in writing to the Speaker, that, in his opinion, it is such that it ought not to be entertained by the House without referring it to the Standing Orders Committee, whereupon the clause or amendment stands referred to that committee.

**Proposed clauses or amendments referred to Standing Orders Committee (S.Os. 182, 107).**—If a clause or amendment is referred to the Standing Orders Committee there can be no further proceeding until their report has been brought up. When the clause or amendment has been offered on the consideration of the bill, they report whether or not it may properly be adopted by the House, or whether the bill should be recommitted.

## PROCEEDINGS ON CONSIDERATION AND THIRD READING

A private bill, unlike a public bill (see p. 536), is considered, as amended, on question put, and to this question amendments may be moved, for

example, to secure the consideration of the bill on a later day or its re-committal. A reasoned amendment irrelevant to the provisions of the bill has been ruled out of order (*k*).

The question for "the consideration of a bill as amended" has sometimes been amended, before being agreed to, by the insertion of words, moved by the Chairman of Ways and Means, calling attention to the fact that the committee on the bill contrary to S.O. 156 (as worded previously to 1945), had allowed a longer period than sixty years for the repayment of a loan (*l*) (see p. 929).

#### DEBATE ON CONSIDERATION, AND THIRD READING

Debate on the question for consideration of a private bill, as reported from a committee, or for its third reading has been confined by rulings from the chair within narrower limits than the debate on second reading. Not only have attempts to raise questions of general policy been ruled out of order as on the second reading (*m*) (see p. 901-02), but the tendency has also been to restrict debate on the later stages to the matters contained in the bill (*n*). Thus a motion to recommit a bill with reference to matters outside its scope has been refused (*o*), while new clauses and amendments have been held to be out of order on the same ground (*p*).

#### AMENDMENTS ON CONSIDERATION

On the consideration of a private bill the House may introduce new clauses or amendments, subject to the restrictions imposed on such amendments by S.O. 182 described above, and by the practice of the House regarding charges upon the people (see p. 539).

It has sometimes been held that S.O. No. 41 (Public), which provides that no amendment may be proposed upon the report stage of any bill, which could not have been proposed in committee without an Instruction from the House, is applicable to private as well as to public bills (*q*), but, in so far, anyhow, as amendments proposed to a private bill by the promoters are concerned, the governing conditions are expressed in S.O. 182.

A new procedure has been recently adopted for dealing with amendments on consideration and verbal amendments on third reading, proposed by the promoters, and Lords' amendments. When the title of the bill is read, the Chairman of Ways and Means, on rising to move the amendments, indicates to the House the nature of the amendments, for example,

(*k*) H. C. Deb. (1910) 19, c. 943.

(*l*) C. J. (1901) 158; Parl. Deb. (1901) 93, c. 572-80; C. J. (1922) 252, 256; H. C. Deb. (1922) 156, c. 668, 699; C. J. (1932-33) 112. Cf. also C. J. (1935-36) 235.

(*m*) Parl. Deb. (1895) 32, c. 1605; *ibid.* (1901) 97, c. 1312; see also the Speaker's ruling on a new clause, H. C. Deb. (1938) 334, c. 267-69.

(*n*) Parl. Deb. (1895) 32, c. 705; *ibid.* (1895) 33, c. 781; H. C. Deb. (1910) 17, c. 1273; *ibid.* (1910) 18, c. 276; *ibid.* (1910) 19, c. 1844, 1847; *ibid.* (1914) 60, c. 1116, 1119, 1124; on a provisional order bill, *ibid.* (1918) 107, c. 815. For similar rulings on bills introduced under the Private Legislation Procedure (Scotland) Act, 1899, see Parl. Deb. (1908) 198, c. 443; H. C. Deb. (1910) 19, c. 1855; *ibid.* (1919) 122, c. 1025; *ibid.* (1935-36) 312, c. 2108.

(*o*) H. C. Deb. (1910) 19, c. 1842.

(*p*) Parl. Deb. (1891) 353, c. 555.

(*q*) Parl. Deb. (1893) 15, c. 1174, 1317-38.

that they are only of a drafting nature, that no objection need be taken to them or that he recommends them to the House. The amendments are then put from the chair in a single question. In the case of amendments on consideration or verbal amendments on third reading, the question is, "That these amendments be made" and in the case of Lords' amendments "That this House doth agree with the Lords in the said amendments." The duty of the Chairman of Ways and Means under S.Os. 182 and 183, with regard to amendments on consideration and third reading (see p. 952), and under S.O. 185, with regard to Lords' amendments (see p. 955), remains unaffected. When the amendments are not printed, a copy of them may be seen in the Committee and Private Bill Office, and a notice to this effect appears on the order paper. Amendments proposed by members are dealt with in the ordinary way (r) (see p. 537).

#### BILL ORDERED TO BE READ THE THIRD TIME

After a bill has been considered, it is ordered by the House to be read the third time.

#### ENTRY OF AMENDMENTS ON CONSIDERATION OR THIRD READING; AND LORDS' AMENDMENTS (S.O. 206)

When amendments are made by the House on the consideration of a bill, or verbal amendments on the third reading, and also when Lords' amendments have been agreed to, they are entered by one of the clerks in the Committee and Private Bill Office, upon the House copy of the bill, as amended in committee. This copy, as amended, is signed by him, and preserved in the office.

#### NOTICE OF THIRD READING OF PRIVATE BILL (S.O. 205)

Not less than one clear day's notice, in writing, is required to be given by the agent for the bill, in the Committee and Private Bill Office, of the day proposed for the third reading; and this notice may not be given until the day after the bill has been ordered to be read the third time.

#### THIRD READING OF PRIVATE BILL (S.O. 184)

On the third reading, verbal amendments only may be made (see p. 543), and, in other respects, this stage is the same as in the case of public bills; the House finally approves of the entire bill, with all the alterations made since the second reading, preparatory to its being passed and sent up, or returned, to the House of Lords (see p. 545).

#### RECOMMITTAL ON THIRD READING

The order for the third reading of a bill has sometimes been discharged, and the bill has been recommitted (s) or the question for the third reading of the bill has been amended by an order to recommit the bill (t).

#### KING'S CONSENT

The third reading is usually the stage at which the King's consent is signified to any bill affecting the property or interests of the Crown, or

(r) See H. C. Deb. (1937-38) 334, c. 315.

(s) C. J. (1851) 202, 209.

(t) C. J. (1897) 324; *ibid.* (1911) 272; *ibid.* (1921) 342. See also C. J. (1924) 343 where the amendment for recommitment was negatived.

Duchy of Lancaster ; and the consent of the Prince of Wales, as Duke of Cornwall, or, if he is not of age, of the King on his behalf (*u*).

On 20 April 1852, notice being taken that her Majesty's interest was concerned in the Rhyl Improvement Bill, and that her consent had not been signified thereto, the proceedings on the third reading of the bill, on a previous day, were ordered to be null and void (*a*).

#### BILL EXAMINED BEFORE BEING SENT TO THE LORDS (S.O. 207)

No private bill is permitted to be sent up to the House of Lords, until a certificate is endorsed on the fair printed bill, and signed by the proper officers, declaring that such printed bill has been examined, and agrees with the bill as read the third time.

#### LORDS' AMENDMENTS (S.Os. 208, 88, 185)

If the bill is subsequently returned from the Lords with amendments, notice is to be given, in the Committee and Private Bill Office, not less than one clear day before they are to be considered, and if any amendments are intended to be proposed thereto, a copy of such amendments is to be deposited ; and no such notice may be given until the day after that on which the bill has been returned from the Lords. Copies of such amendments are also to be laid before the Chairman of Ways and Means and the Counsel to the Speaker, before two o'clock on the day previous to that on which they are to be considered. As the Lords' amendments may relate to matters which might be construed to involve an infringement of the privileges of the Commons, and the amendments proposed to them may be in the nature of consequential amendments (see p. 545), the Speaker's sanction must be obtained before they are proceeded with. Before Lords' amendments or any amendments to Lords' amendments are taken into consideration, the Chairman of Ways and Means may direct that they be printed at the expense of the parties, if he considers that prints should be made available for the use of members ; and where a clause has been amended or a Lords' amendment is proposed to be amended, that it should be printed *in extenso*, with every addition or substitution in distinctive type, and omissions included in brackets and underlined.

Towards the end of the session the consideration of Lords' amendments is sometimes expedited by the suspension of S.Os. 185 and 208 for the remainder of the session (*b*), or, when an autumn session is contemplated, until the summer adjournment (*c*). A similar order may also be made in the case of an individual bill (*d*).

#### AMENDMENTS TO LORDS' AMENDMENTS INVOLVING A CHARGE

If any amendment be proposed to the Lords' amendments, involving a charge upon the people, it is committed to a Committee of the whole House (*e*).

(*u*) C. J. (1845) 513 ; *ibid.* (1877) 245 ; *ibid.* (1929-30) 451.

(*a*) C. J. (1852) 157. See Blackwater (Youghal) Wooden Bridge Bill, *ibid.* (1866) 423

(*b*) C. J. (1921) 338 ; *ibid.* (1928-29) 232 ; *ibid.* (1929-30) 474.

(*c*) C. J. (1922) 297 ; *ibid.* (1935-36) 350 ; *ibid.* (1937-38) 380.

(*d*) C. J. (1914-16) 123.

(*e*) Ulverstone, etc., Railway Bill, and Manchester Improvement Bill, C. J. (1851) 358, 398 ; Christchurch, etc., Tithe Bill, *ibid.* (1878) 409.



In the case of the Great Northern Railway (Isle of Axholme Extension) Bill, the Lords' amendments were referred to a committee nominated by the Committee of Selection (*f*). In other cases, the Lords' amendments have been recommitted, or referred, to the former committee by whom the bills had been considered (*g*).

#### COMMONS' PRIVILEGES INFRINGED BY THE LORDS

The principles as to the infringement of the Commons' privileges by the Lords in the case of private bills are the same as in the case of public bills except in so far as they are modified by S.O. 191 (see also pp. 860-61). If a private bill, which contains provisions creating a charge or imposing a tax, originates in the Lords, those provisions are struck out in that House on third reading (*h*), the bill is sent down to the Commons with blanks, and the words are reinserted by the Commons, after the necessary resolution authorizing them, has been agreed to (see pp. 767-68). When an amendment, involving privilege, is made by the Lords to a bill originating in the Commons, the Speaker brings it to the attention of the House, and it is for the House to decide whether it is willing to waive its privileges. If it is willing the amendment is agreed to with a special entry in the Journal (*i*).

Formerly, where amendments infringing the privileges of the Commons were made by the Lords, the bill was sometimes laid aside in that House. If such amendments were otherwise acceptable to the Commons the following procedure was sometimes resorted to. A committee was appointed by the Commons to search the Lords' Journals, and on their report another bill (No. 2) was ordered, which included the amendments made by the Lords. In 1889, the Provident Life Assurance Company Bill and the Imperial Fire Assurance Company Bill were both brought from the Lords, containing clauses dealing with stamp duty, and were laid aside in the Commons, and other (No. 2) bills were ordered in their place (*k*). It would appear doubtful whether this practice would now be followed, since co-operation between the officials of the two Houses should render it unnecessary.

#### GENERAL PROVISIONS

Every stage of a private bill in the Commons has now been described, with the several standing orders and proceedings applicable to each. In conclusion, it may be added that, under S.O. 188, except in cases of urgent and pressing necessity, no motion may be made to dispense with any sessional or standing order of the House, without due notice thereof.

#### STANDING ORDERS SUSPENDED

In the case of some bills—more especially those that are brought from the other House at a late period of the session—it is not infrequently

(*f*) C. J. (1847-48) 790.

(*g*) Salford Improvement Bill, C. J. (1862) 360; Great Eastern Railway Bill, *ibid.* (1867) 337.

(*h*) L. J. (1929-30) 43 (Birmingham Corporation (General Powers) Bill).

(*i*) C. J. (1890) 575; Parl. Deb. (1890) 348, c. 964; C. J. (1929-30) 482; H. C. Deb. (1930) 242, c. 235.

(*k*) C. J. (1889) 304, 316.

found necessary to suspend the standing orders and to permit the bills to proceed without the usual intervals and notices.

### SUSPENSION OF BILLS TILL FOLLOWING SESSION

Where a dissolution of Parliament is anticipated before the private business of the session has been disposed of, it has been customary for both Houses to make orders enabling the promoters of private bills and provisional order bills to suspend further proceedings, and to afford facilities for their proceeding further with the same bills in the next session (*l*). In a similar manner orders have also been made, late in the session, in order that particular bills might be suspended and proceeded with in the next session of the same Parliament (*m*).

### FURTHER SUSPENSION OF BILLS

When the time available in the next session has not sufficed for the consideration of suspended private or provisional order bills, they have been further suspended, either collectively or singly, until the following session (*n*).

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(*l*) L. J. (1859) 176, 207, and C. J. (1859) 165; L. J. (1910) 307, and C. J. (1910) 307; L. J. (1928-29) 294, and C. J. (1928-29) 273; L. J. (1930-31) 369, and C. J. (1930-31) 441.

(*m*) Tramways (Metropolis) Bills, 1871; General Power Distributing Company Bill, 1898; Brompton and Piccadilly Circus Railway, and other London Underground Railways, Bills, 1901; Leeds Corporation (Consolidation) Bill, 1904; Hammersmith, City, and North East London Railway Bill, 1906; Local Government Provisional Orders (No. 21) Bill, East Ham Corporation Bill and Electric Lighting Provisional Order (No. 8) (Kingstown) Bill [Lords], 1913; London County Council (General Powers) Bill, Glasgow Corporation (Celluloid) Bill, Pack-Beresford Divorce Bill [Lords], and Local Government Provisional Orders (No. 23) Bill, 1914; Ministry of Health Provisional Order (Housing) Bill, 1919; Ministry of Health Provisional Order (Cardiff Extension) Bill, 1921; Bognor Urban District Council Bill, and Ministry of Health Provisional Orders (No. 6) Bill, 1928; London County Council (Improvements) Bill [Lords], 1930.

(*n*) L. J. (1886) 378, and C. J. (1886) 380; C. J. (1921) 405; *ibid.* (1931-32) 22, 289 (Humber Bridge Bill). C. J. 31 October 1944 (London, Midland and Scottish Railway Bills). For the case of a hybrid bill, see C. J. (1930-31) 444, 446, and *ibid.* (1931-32) 322 (London Passenger Transport Bill).

## CHAPTER XXXIV

# COURSE OF PROCEEDINGS IN THE HOUSE OF LORDS UPON PRIVATE AND PERSONAL BILLS (a) ROYAL ASSENT AND CLASSIFICATION OF STATUTES.

### PRIVATE AND PERSONAL BILLS IN LORDS

As has been already mentioned (see p. 844, n. (f)), both Houses carried out in 1945 a revision of their standing orders relative to private bills, that of the Lords being subsequent to, and consequent on, that by the Commons (b). In particular, the standing orders of both Houses, compliance with which is to be proved before the Examiners, have now a practically complete similarity. This has involved, in the Lords, the abolition, not only of the division of bills into two classes, but of the term "Local Bills" which, by the former S.O. 1, was applied to those private bills which were not termed "Personal Bills." However, S.O. 3 (H. L.) now differs from S.O. 3 (H. C.) in retaining the term "Personal Bills" for those bills relating to the estate, property, status, or style, or otherwise relating to the personal affairs of an individual, which under the analogous Commons' order are to be termed "Certified Bills" (see p. 844).

Formerly, the only private bills which could originate in the Lords were those which did not concern rates, tolls, or duties. But the convenient relaxation in the privileges of the Commons (see p. 767), and the desire to equalize the pressure of private business upon the two Houses, have led to the present arrangement—for introducing as near as may be half of the private bills of each session, in the first instance, into the House of Lords. This arrangement, and the manner of determining in which House each private bill shall originate, have already been described (see p. 860). Private bills which have always been first brought into the Lords are estate, naturalization, and name bills, and such as relate to the peerage; but naturalization and name bills may now generally be regarded as obsolete, inasmuch as the objects for which they were introduced can be attained without legislation.

### (1) PRIVATE BILLS

#### DEPOSIT OF PETITION FOR BILL NOT REQUIRED EXCEPT IN CERTAIN CASES (S.Os. 2, 97)

No private bill for which a petition has not been lodged in the House of Commons may originate in the House of Lords except upon a petition

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(a) The references to the standing orders in this chapter are, unless otherwise stated, to the Standing Orders of the House of Lords relative to private bills.

(b) Report from the Select Committee on Private Bill Standing Orders, H. L. 28 (1945-46).

signed by the parties, or some of them, who are promoters of the bill (S.O. 2). The Chairman of Committees, however, has the same power as the Chairman of Ways and Means in the Commons (see p. 862) to grant leave for the deposit of a petition for a late bill, and subject to the same conditions (S.O. 97). This supersedes the former procedure by which a petition, with a copy of the bill annexed thereto, was presented to the House, and they were together referred to the Examiner, who reported to the House that the standing orders had not been complied with, and the Standing Orders Committee, to whom the report was referred, decided whether the circumstances of the case were such that the standing orders might be dispensed with and leave be given to introduce the bill (c).

#### DEPOSIT OF BILL (S.O. 38)

A printed copy of every private bill, proposed to be introduced into either House, is required to be deposited in the Office of the Clerk of the Parliaments, on or before 27 November.

#### PROCEEDINGS BEFORE THE EXAMINERS (S.Os. 69-83)

The examination of the bills so deposited is to commence on 18 December. Any parties may appear before the Examiners and be heard, by themselves, their agents and witnesses, upon a memorial addressed to the Examiner, under precisely the same conditions as in the Commons (see p. 849). The Examiner certifies whether the standing orders, which are applicable prior to the introduction of the bill, have or have not been complied with; and when they have not been complied with, he reports the facts upon which his decision is founded, and any special circumstances connected with the case; and his certificate is deposited in the office of the Clerk of the Parliaments. If the Examiner feels doubts as to the due construction of any standing order he is to make a special report, which will accompany his certificate. By these arrangements the proofs of all the requirements of the standing orders which are to be complied with, prior to the introduction of the bill into either House of Parliament, are taken before the bill is brought into the House of Lords.

Every bill brought from the Commons, unless it is a Personal Bill, is referred, under S.O. 74, after the first reading, to the Examiners, before whom compliance with such standing orders as have not been previously inquired into is proved. As regards petitions for additional provision, S.O. 73 lays down procedure identical, *mutatis mutandis*, with that in the Commons (see p. 846). The Examiner is required by S.Os. 73 and 74 to give two clear days' notice of his examination, either of a bill or of a petition for additional provision; and memorials in respect of any bill referred to the Examiners after first reading, or by direction of the Chairman of Committees, or in respect of any petition for additional provision (see p. 961), or any petition for leave to bring in a bill deposited after 27 November, are to be deposited under S.O. 78, with two copies,

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(c) *Darien Gold Mining Company's Bill*, L. J. (1905) 46, 52, 55, 60, 62; *Kent Electric Power Bill*, *ibid.* (1936-37) 110, 126, 134; *Hastings Pier Bill*, *ibid.* (1936-37) 165, 180, 184, 188.

in the office of the Clerk of the Parliaments before twelve o'clock on the preceding day.

All certificates of the Examiners are, under S.O. 82, to be laid upon the table of the House not later than the first sitting day after their deposit (*d*).

#### STANDING ORDERS COMMITTEE (S.Os. 84-89)

The Standing Orders Committee is appointed at the commencement of every session, and consists of the Chairman of Committees of the House of Lords, who is always chairman and such other lords as are named by the House. Three lords, including the chairman, are a quorum; and three clear days' notice is to be given of the meeting of the committee.

Every certificate from the Examiner, stating that the standing orders have not been complied with, or any special report made by him (*e*), is referred to this committee (*f*), who report whether the standing orders ought to be dispensed with, and upon what terms and conditions, if any. This committee is specially empowered by S.O. 88 to hear the parties affected by any standing order referred to in the Examiner's certificate or special report, provided that such parties shall have duly deposited a statement (which is to be strictly confined to the points reported upon by the Examiner) of the facts to be submitted to the committee. Such statements are to be lodged in the office of the Clerk of the Parliaments, not later than three o'clock on the second day after the order for the meeting of the committee is made, or one o'clock, if that day be a Saturday. In practice, the agents of the parties are invariably heard on their statements by the Standing Orders Committee in the Lords; but, under the standing order, no party is to be allowed to travel into any matter not referred to in his statement.

**The "Wharnccliffe" Orders.**—In addition to the standing orders already proved before the Examiners prior to the introduction of the bill, there are certain other orders with which compliance is proved at a later period before the Examiner, who in all cases reports whether they have or have not been complied with. These are the "Wharnccliffe" Orders already described on pp. 896-98, which *mutatis mutandis* are the same for both Houses.

**Bills brought from the other House, Notices and Deposits (S.Os. 60 and 61).**—As already described, compliance has also to be proved with a standing order (which is identical in both Houses) in the case of particular bills brought from the other House, in which certain alterations have there been made (see pp. 895-96); and with the standing order which is also the same in both Houses and which relates to the deposit with various departments, at a prescribed time, of every bill brought from the other House (S.O. 60.)

#### THE CHAIRMAN OF COMMITTEES

Allusion has already been made (see pp. 858-60) to the supervision of private bills by the Chairman of Committees in the House of Lords.

(*d*) The proceedings of the Examiner in respect of hybrid bills (S.O. 83) are similar to those in the Commons (see p. 835).

(*e*) Sunderland Corporation Bill (petition for additional provision), L. J. (1934-35) 142, 152, 169.

(*f*) For case of Examiner's report referred to Standing Orders Committee forthwith, see L. J. (1917-18) 233.

Specific standing orders (S.Os. 90-93) give him powers to confer with the Chairman of Ways and Means for determining the allocation of bills between the two Houses, to direct the House's attention to special circumstances, to report that an unopposed bill should proceed as an opposed bill, and to direct the House's attention to any proposed instruction to a committee to make an amendment which could only have been proposed (by the promoters) by a petition for additional provision; these powers are similar to those conferred on the Chairman of Ways and Means by S.Os. 81, 82, and 85 (H. C.) respectively (see pp. 860, 919).

#### FIRST READING (S.O. 98)

No private bill is to be read a first time until the Examiner has certified, or the Standing Orders Committee have reported, compliance with the standing orders, and no such bill originating in the Lords is to be read later than three clear days on which the House sits for public business after such certificate or report. Where, after a certificate of non-compliance or a special report of the Examiner, the Standing Orders Committee have reported that the standing orders ought to be dispensed with, the bill is to be read a first time not later than one clear day after the House has agreed that the bill shall be allowed to proceed.

#### PETITIONS AGAINST PRIVATE BILLS (S.Os. 101-103)

S.O. 101, which prescribes the limit of time for presenting petitions against private bills, has now been assimilated to S.O. 129 (H. C.) (see pp. 870-71), but the date in the Lords corresponding to 30 January in the Commons is 6 February. There is the same provision, in certain cases, for deposit not later than ten clear days after first reading. If the period allowed for presenting petitions, except those which are required to be presented by 6 February, expires during any recess of the House, it is extended to the first sitting day after the recess. Any petitioner can withdraw his petition on the deposit of a requisition to that effect in the Office of the Clerk of Parliaments, signed by the agent depositing the petition; a petitioner can similarly withdraw from a petition signed by other persons besides himself (S.O. 103). S.O. 102 provides for the printing or typewriting of petitions praying to be heard, and the supply of copies by the agent concerned to parties and the agent for the bill (cf. S.O. 172 (H. C.)).

#### PETITION FOR ADDITIONAL PROVISION (S.O. 73)

No petition for additional provision is to be presented without the sanction of the Chairman of Committees; and no such petition will be received in the case of a bill brought from the House of Commons (g).

#### SECOND READING (S.O. 99)

The provisions as to interval between first and second reading, both as

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(g) Cf. also S.O. 102 as to the printing of petitions for additional provision, of petitions against bills, and of petitions against alterations.

regards bills originating in the Lords and bills brought from the Commons, are by S.O. 99 similar to those contained in S.O. 170 (H. C.) (see p. 898.)

**Debate on second reading, and commitment.**—The second reading of a private bill is in most cases formal, and does not, as in the case of public bills, affirm the principle of the bill, which may therefore be called in question before a committee (*h*). The second reading is followed by the commitment. The House of Lords have, however, now made an order, S.O. 100, similar to S.O. 175 (H. C.) prohibiting committal, in the case of bills referred to the Examiners after second reading, until the Examiners or the Standing Orders Committee have reported, as the case may be (see pp. 903-04.)

#### INSTRUCTIONS

Instructions to committees on local and personal bills are rarely given by the House of Lords (*i*), though instances of this mode of procedure have occurred (*k*).

#### COMMITTEE OF SELECTION (S.O. 95)

The Committee of Selection consists of the Chairman of Committees and such other lords as may be named by the House. They not only select and propose to the House the names of the five lords who are to form the select committee for the consideration of an opposed private bill or bills; but they also appoint the chairman of such committee, and name the bill or bills to be considered on the first day of meeting of the committee.

#### COMMITTEES ON OPPOSED BILLS (S.Os. 96, 104)

Every opposed private bill is referred to a select committee of five, selected by the Committee of Selection (*l*). Lords are exempted from serving on the committee on any bill in which they are interested, and may be excused from serving for any special reasons to be approved of, in each case, by the House. On 2 April 1868 it was resolved that the absence of any lord, except on sufficient reason, ought not to prevent the Committee of Selection from calling for his services (*m*).

(*h*) See debate on motion to recommit the South-Eastern and London, Chatham, and Dover Railway Companies (Arbitration) Bill, 18 May 1885, Parl. Deb. (1885) 298, c. 650. Cf. also H. L. Deb. (1925) 60, c. 491; *ibid.* (1933) 86, c. 1197, 1206; *ibid.* (1937) 104, c. 902, 918-21 (two bills rejected on second reading).

(*i*) Parl. Deb. (1897) 49, c. 457; *ibid.* (1902) 109, c. 1340-41; *ibid.* (1905) 146, c. 1080; H. L. Deb. (1916) 21, c. 297.

(*k*) Dublin Corporation Bill, L. J. (1897) 168; Parl. Deb. (1897) 49, c. 453-64; London County Council (Subways and Tramways) Bill, L. J. (1902) 249; Parl. Deb. (1902) 109, c. 1332-50; Woolwich Borough Council Bill, L. J. (1905) 162; Parl. Deb. (1905) 146, c. 1075-87; South Eastern and London, Chatham and Dover Railways Bill, L. J. (1916) 55; H. L. Deb. (1916) 21, c. 425; Croydon Corporation Bill, L. J. (1923) 91; H. L. Deb. (1923) 53, c. 689; London County Council (Tramways and Improvements) Bill, H. L. Deb. (1924) 57, c. 494; Middlesbrough Corporation Bill, L. J. (1932-33) 128; Birmingham Corporation Bill, *ibid.* (1934-35) 133; Poole Corporation Bill, *ibid.* (1936-37) 201. And cf. L. J. (1892) 112 (general instruction to committees on railways bills of session, 1892). In 1893 the committee on the London Improvements Bill treated as an instruction a resolution of the House passed on 25 July of that year—to the effect that a clause in the bill, authorizing the principle of taxation for betterment, ought not to be embodied in a private bill—and refused to hear the parties on the clause.

(*l*) For cases in which private and provisional order bills have been committed to a joint committee, see pp. 625, 916-17, and for proceedings after second reading in the Lords on bills originating in the Commons which have been so committed, see p. 917.

(*m*) L. J. (1867-68) 103.

**All Members to attend (S.O. 105).**—Every member is to attend the proceedings during their whole continuance; “and no lord who is not a member of the committee shall take any part in the proceedings.”

**Absence of Members (S.O. 106).**—If any member “is prevented from continuing his attendance, the committee shall adjourn, and shall not resume its sittings, in the absence of such member, without leave of the House; but if the House is not then sitting the committee may, with the consent of all parties, continue its sittings in the absence of any member, provided that the number of the committee be not less than four, and that the committee report accordingly to the House at its next meeting” (n).

**Report of Causes of Adjournments (S.O. 108).**—Every committee on an opposed bill must report to the House the cause of any adjournment over any day on which the House is to sit.

## PROCEEDINGS IN COMMITTEE

### (A) OPPOSED BILLS

**Order in which committees consider bills (S.O. 107).**—The committee take the bill or bills first into consideration which have been named by the Committee of Selection, “and may from time to time appoint the day on which they will enter upon the consideration of each of the remaining bills without reporting to the House any adjournment of the committee caused thereby.”

**Withdrawal of opposition (S.O. 113).**—If no parties appear on their petitions against a bill or on a petition against alterations, or, having appeared, withdraw their opposition before the evidence of the promoters has been commenced—or if their *locus standi* is disallowed—the committee are required to report accordingly to the House, and the bill is then dealt with as if originally unopposed. But nothing contained in this order prevents the committee “from requiring the preamble of a bill to be proved in any case in which an application for costs has been made” (o).

**Hearing and evidence.**—The House of Lords have now adopted the provisions of S.Os. 126 (H. C.), 127 (H. C.) and 128 (H. C.), relating to reference of petitions to committees, hearing and evidence, and specific statements of objections (see pp. 923, 930). The proceedings of a Lords' committee on an opposed bill differ in no material point from those of a committee in the Commons, except as to questions of *locus standi* presently to be mentioned. By section 2 of the Parliamentary Witnesses Act, 1858 (21 & 22 Vict. c. 78), any committee of the House of Lords may administer

(n) See debates on the absence of Lord Gardner, Parl. Deb. (1845) 81, c. 1104, 1190.

(o) As to the power possessed by committees of the House of Lords, in common with those of the other House, of awarding costs, cf. pp. 942–44. Costs granted to promoters: Ardmore Harbour Bill, L. J. (1867–68) 154; Oxford, Aylesbury, and Metropolitan Junction Railway Bill, *ibid.* (1883) 348; East Usk Railway Bill, *ibid.* (1884–85) 111; Newry Navigation Bill, *ibid.* (1897) 167; Burgess Hill Water Bill, *ibid.* (1901) 218; Gloucester Corporation Bill, *ibid.* (1928) 76. Costs granted to petitioners: South Kensington New Road Bill, *ibid.* (1866) 192; Swansea Canal Transfer Bill, *ibid.* (1866) 191; Oldham Extension Bill, *ibid.* (1890) 273; Sutton Cemetery Bill, *ibid.* (1890) 208; Salford Improvement Bill, *ibid.* (1893–94) 95; South Hants Water Bill, *ibid.* (1899) 128; Dundee Gas, Tramways and Extension Bill, *ibid.* (1899) 144; London County Council (Tramways and Street Widening) Bill, *ibid.* (1901) 350; Ancient Monuments Preservation Order Confirmation (No. 1) Bill, *ibid.* (1914) 208.



an oath to the witnesses examined before them, and thus the inconvenience of a previous attendance at the bar of the House is avoided. Petitions against the bill are referred, and the parties are heard by themselves, their counsel, agents, and witnesses, in the same manner, and subject to nearly the same rules, as in the Commons. Some are heard upon the preamble, and others against particular clauses, or in support of new clauses or amendments. The bill is gone through, clause by clause, and, after all amendments have been made, it is reported, with the amendments, to the House.

**Locus standi of petitioners (S.O. 114).**—Questions on the *locus standi* of the petitioners against a bill are heard by the committee to which the bill is referred. In this respect the House of Lords has preserved the original practice of both Houses, which was abandoned by the House of Commons in 1865, when the Court of Referees was established (see p. 876); but the House of Lords, like the House of Commons, has passed several standing orders—some mandatory, and some permissive—respecting the *locus standi* of petitioners in certain cases.

**As to locus standi of dissentients at a "Wharnccliffe" meeting (S.O. 115).**—"In case any proprietor or member of any company, society, association, or partnership, has, by himself or any person authorized to act for him in that behalf, dissented at any meeting called in pursuance of any of S.Os. 62 to 67, or at any meeting called in pursuance of any similar standing order of the House of Commons, such proprietor or member shall be permitted, on petitioning the House, to be heard by the committee on the bill."

**Rights of railway companies to locus standi in certain cases (S.O. 116): Power to allow locus standi to associations, etc. (S.O. 117): General power to allow locus standi to local authorities or inhabitants (S.O. 118): Right of certain local authorities to locus standi against lighting and water bills (S.O. 119): Right of County Councils to locus standi against water and tramway bills (S.O. 120).**—The House of Lords' standing orders on these matters are now identical with S.Os. 94–98 (H. C.) (see p. 873 *et seq.*).

**Locus standi against Commons' bills (S.O. 112).**—"A petitioner against a bill originating in the House of Commons, who has discussed clauses in that House, shall not on that account be precluded from opposing the preamble of the bill in this House" (*p.*).

#### (B) UNOPPOSED BILLS

**Unopposed bills referred to Chairman of Committees (S.O. 121).**—"Every private bill against which no petition has been presented, or if presented has been withdrawn, or which has become unopposed by reason of any of the provisions of Standing Order 113, except any bill as respects which the Chairman of Committees has in pursuance of Standing Order 92 reported to the House that in his opinion it should be proceeded with as an opposed bill, shall be referred to the Chairman of Committees to be dealt with by him in a Committee on Unopposed

(*p.*) This is analogous to S.O. 130 of the Commons regarding petitioners against bills brought from the Lords (pp. 886–87).

Bills." The business is in practice transacted by the Chairman of Committees, assisted by his counsel, and the responsibility is vested in the Chairman by the House. Every bill has been previously examined by the Chairman and his counsel; but at this period the Chairman exercises the authority of his own office, combined with that of a committee of the House. In the absence of the Chairman from illness, another peer is appointed to take the chair in all committees, upon private bills, and other matters (see p. 229).

**Unopposed bills, when treated as opposed (S.O. 92).**—The Chairman of Committees may, if he thinks fit, report to the House that, in his opinion, any unopposed bill should be proceeded with as an opposed bill (q).

**Right of Promoters to be heard (S.O. 122).**—The Lords have adopted the new standing order made by the Commons in 1945 (S.O. 134 (H. C.)), stating the right of the promoters of an unopposed bill to be heard by themselves or their agents in its favour.

(c) COMMITTEES ON BILLS WHETHER OPPOSED OR UNOPPOSED (S.OS. 123-130)

**Copies of filled-up bill to be laid before the Chairman of Committees (S.O. 123).**—Copies of filled-up bills and of estimates and statements deposited under S.Os. 45 or 46 must be submitted to the Chairman of Committees before the day appointed for the consideration of the bill in committee; and in the case of an opposed or recommitted bill such copies must be so laid not less than two clear days before the day so appointed.

**Powers of Committees, and their limitations.**—By S.O. 124 a committee are not empowered, without express authority from the House, to hear evidence other than that tendered by any parties entitled to be heard (see p. 930); by S.O. 125 a committee is prohibited from examining into the compliance with standing orders directed to be proved before the Examiners; and by S.O. 126 a committee may admit affidavits in proof of any allegation, deed or document mentioned or set forth in a bill or its schedule.

**Reports of public departments (S.O. 127).**—All reports upon a private bill or its objects by any public departments or by the Attorney General stand referred to the committee on the bill, who may, if they think fit, hear an officer of the department in explanation of the report.

**Agreements (S.O. 129).**—Any agreement scheduled to a bill must contain a clause declaring the same to be made subject to such alterations as Parliament may think fit to make therein; but if the committee make any material alteration in the agreement, any party thereto may withdraw therefrom.

**Arrangements between parties and undertakings given in Committee (S.O. 130).**—It is a condition of acceptance by any com-

(q) Gaslight and Coke Company Bill, L. J. (1873-74) 310; Durham Water Bill, *ibid.* 1878) 215; Wakefield Corporation Bill, *ibid.* (1929-30) 245; Rhyl Urban District Council Bill, *ibid.* (1931-32) 106; Lindsey County Council (Sandhills) Bill, *ibid.* (1931-32) 219; Canvey Island Urban District Council Bill, *ibid.* (1936-37) 188; Saint Bartholomew's Hospital Bill *ibid.* (1937-38) 203.

mittee of any arrangement between the promoters of a private bill and any other party appearing or of any undertaking given to the committee by or on behalf of the promoters or any such other party that any difference arising, after the discharge of the committee, between the parties concerned shall be determined by the Chairman of Committees.

**Reports, etc. of Committees on certain bills.**—The directions given by standing orders to Lords' committees on private bills were assimilated in 1945 to the revised orders of the Commons relating to reports, etc. of committees on certain bills. Thus, S.Os. 131–139 correspond to S.Os. 146–154 (H. C.) relating to bills affecting level of roads and railway, tramroad and tramway bills; S.Os. 140 and 141 correspond to S.Os. 155 and 156 (H. C.) relating to local government bills and S.Os. 142–146 correspond to S.Os. 158–162 (H.C.) relating to bills affecting charitable institutions, accommodation for workmen, water bills and gas works, etc. bills (see pp. 924–30).

#### RECOMMITMENT OF PRIVATE BILLS

**Recommitment to Committee of the whole House (S.O. 94).**—In order to ensure attention to bills affecting public interests, the Chairman of Committees may propose that any private bills be recommitted to a Committee of the whole House (*r*); but no private bill so recommitted is, by reason of such commitment, to be allowed to proceed as a public bill.

#### DEPOSIT OF AMENDED BILLS (S.O. 147)

A copy of every private bill, as amended in committee, is to be deposited not less than three clear days before the third reading at every office at which it was deposited under S.Os. 39, 40, and 194, or would be required to be deposited under those orders if it had been originally introduced as amended in committee. Such deposit is not necessary at the Air Ministry or the Ministry of Civil Aviation, unless required by the Secretary of State or the Minister, as the case may be. Proof of compliance with this order is given by depositing a certificate in the office of the Clerk of the Parliaments.

**Private bills to be reprinted (S.O. 128).**—It is further ordered that all private bills in which any amendments have been made in the committee shall be reprinted as amended, previously to the third reading, unless the Chairman of Committees shall consider that the reprinting of such bill is unnecessary.

#### AMENDMENTS ON REPORT, AND THIRD READING, OF PRIVATE BILLS (S.Os. 148, 149)

No amendment may be moved to any private bill on the report or third reading, unless it has been submitted to the Chairman of Committees, and copies, which have to be printed except where the Chairman of Committees considers printing to be unnecessary, have been deposited in the office of the Clerk of the Parliaments one clear day, at least, prior to such report or third reading. Every private bill originating in the Lords

(*r*) Oriental Bank Corporation Bill, L. J. (1873–74) 318, Nottingham Corporation Bill, *ibid.* (1882) 170.

must be printed fair after it has been read the third time, and a copy thereof must be deposited at the office of the Clerk of the Parliaments and will be the copy sent to the House of Commons.

#### COMMONS' AMENDMENTS (S.O. 150)

Copies of Commons' Amendments to Lords' bills and of amendments proposed by promoters to such amendments must be laid by the agent before the Chairman of Committees before two o'clock on the day when such amendments are considered by the House.

### (2) PERSONAL BILLS (S.Os. 151-174)

#### DEFINITION (S.O. 151)

By S.O. 151 all bills certified under S.O. 3 (see p. 958) are termed "Personal Bills" in the Lords, and, since it is bills "relating to the estate, property, status, or style, or otherwise relating to the personal affairs of an individual" which are to be certified, it follows that Estate bills are no longer distinguished in the Lords' standing orders from other Personal bills. This departure dates from 1945, when, in the revision of the standing orders, the House of Lords redrafted a former standing order which instituted a committee on Estate bills: the scope of the committee was enlarged so as to include all Personal bills certified under S.O. 3 (s). The proceedings on Personal bills are subject to any general or special directions given from time to time by the Chairman of Committees. Also, by S.O. 174 all relevant standing orders relating to private bills are applied, so far as applicable, to Personal bills, subject to any directions by the Chairman of Committees. Similarly, by S.O. 199, where a private bill contains clauses or provisions of the nature of a Personal bill, the Chairman of Committees may direct that the relevant provisions of Part VII of the standing orders (relating to Personal bills) shall apply.

#### PRELIMINARY STAGES

**Petitions for Bills (S.Os. 152, 153).**—No personal bill is to be brought into the House except on petition for leave to bring in such bill, and a printed copy of the proposed bill is to be annexed to the petition. One or more of the parties principally concerned in the consequences of the bill must sign the petition.

**Personal bills to be delivered to persons concerned (S.Os. 157, 167).**—A copy of every personal bill is to be delivered before the second reading to every person concerned; and, in case of infancy, such copy is to be delivered to the guardian, or next relation of full age, not concerned in the consequences of the bill. In any case in which an infant is or may be interested in the consequences of a Personal bill "the Chairman of Committees may, if he think fit, require that such infant shall be represented in any proceeding in reference to the bill or the petition by a person to be appointed as or in the nature of a guardian or protector of

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(s) For the principles which guided the Select Committee on Private Bill Standing Orders in formulating the proposed procedure, see Report of that committee H. L. 28 (1945).

such infant by the Lord Chancellor or the Lord Keeper of the Great Seal by writing under his hand" (t).

**The Committee on Personal Bills (S.O. 154).**—A Committee on Personal Bills is to be appointed at the commencement of every session : and every petition for a Personal bill, as soon as deposited, stands referred to the committee. The committee consists of five lords, including the Chairman of Committees, and three lords form a quorum. In respect of every Personal bill the petition for which is referred to them the committee are to report to the House whether the objects are proper to be enacted by a Personal bill, whether the provisions thereof are proper for carrying its purposes into effect, and what amendments, if any, are required. The Chairman is to sign the copy of the proposed bill, containing any amendments recommended, if the bill is approved by the committee : a copy of the committee's report and of the amended bill are to be supplied to the agent for the bill.

**Scottish Personal Bills (S.O. 155).**—The order respecting Personal bills affecting private interests in Scotland is somewhat different. The parties are heard, the evidence taken, and the consents to the bill and acceptances of trusts proved, before two judges of the Court of Session to whom the bill is referred, who then report their opinion, their approval or otherwise, and any amendments recommended, to the Committee on Personal bills. This report is delivered by the parties to the Chairman of Committees for submission to the Committee on Personal bills, who are precluded from reporting to the House on the petition for such bill until the report of the judges has been received and considered.

#### FIRST READING OF PERSONAL BILL (S.O. 156)

No Personal bill is to be read a first time until the report of the Committee on Personal bills has been made to the House.

#### NOTICE OF PERSONAL BILL (S.O. 162)

Notice of a Personal bill is to be given to every mortgagee, before the second reading.

#### PETITIONS AGAINST PERSONAL BILLS (S.O. 158)

Petitions against Personal bills are to be presented at such times as the Chairman of Committees shall, in each case, having regard to all the circumstances, direct.

#### COMMITMENT OF PERSONAL BILLS

By S.O. 159 no committee, other than the Committee on Personal bills, may sit upon any Personal bill until ten days after second reading : and no interval between first and second reading is prescribed by standing order. Every unopposed Personal bill is referred to the Chairman of

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(t) Earl of Aylesford's Estate Bills, L. J. (1883) 142-43 ; *ibid.* (1884) 307 ; Belfast Corporation Bill, *ibid.* (1890) 238 ; Earl of Stamford's Cheshire Estate Bill, *ibid.* (1905) 233 ; Bury Estate Bill, *ibid.* (1927) 148 ; Grosvenor Estate Bill, *ibid.* (1932-33) 195 ; Tatton Estate Bill, *ibid.* (1936-37) 267.

Committees, who deals with it as an unopposed private bill; but he is given power to report that, in his opinion, an unopposed Personal bill should be proceeded with as an opposed bill. Every Personal bill which is opposed or as respects which the Chairman of Committees has reported as above is referred to a select committee of five lords, and is proceeded with as an opposed private bill.

#### COMMITTEES ON PERSONAL BILLS

The several proceedings of committees on Personal bills—the consents and acceptances of trusts, the evidence required, the provisions to be inserted, and other matters—are specifically directed by S.Os. 163–173.

#### THIRD READING OF PRIVATE AND PERSONAL BILLS

When a private or Personal bill has been reported from a committee, the bill is appointed to be read the third time on a future day.

#### PROCEEDINGS AFTER THIRD READING

When a bill has been read the third time, and passed, it is sent to the Commons; or, if it is a bill originally brought from that House, it is returned “with amendments,” or a message is sent to acquaint the Commons that it has been agreed to without any amendment. The ordinary proceedings in the Commons upon amendments made by the Lords to Commons’ bills were described in the last chapter. In the event of any disagreement between the Houses in reference to amendments, the same forms are observed as in the case of public bills (see p. 545).

#### LONDON COUNTY COUNCIL (MONEY) BILLS (S.Os. 175–177) (a)

The orders regulating the introduction of, and proceedings on, money bills promoted by the London County Council are practically identical with the first three of the four standing orders of the Commons (S.Os. 220–222 (H. C.)) on this subject (see p. 861, 895, 929–30).

#### BILLS RELATING TO NORTHERN IRELAND (S.O. 200)

The Standing Orders apply to a bill which relates wholly or partially to Northern Ireland, subject to such adaptations and modifications as may be prescribed by the Lord Chairman, or the Standing Orders Committee; but nothing in S.O. 200 is to be taken as implying any extension of the cases in which bills relating to Northern Ireland may properly be promoted in the British Parliament.

#### LORDS’ PRIVATE BILLS IN THE COMMONS

In the Commons all private bills when received from the Lords are read the first time, and, under S.O. 74 (H. C.), are referred to the Examiners (see p. 895). Private bills brought from the Lords pass

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(a) For the standing orders relating to Provisional Order Confirmation Bills, and to proceedings under the Private Legislation (Scotland) Act, 1936, see Chapters XXXV and XXXVI, respectively.

through the same stages, and are subject to nearly the same rules, in the Commons as private bills that have originated there ; and the few points at which the procedure is not altogether identical have been already noticed (Chapter XXXIII).

### RESTITUTION, ETC., BILLS

The procedure described in the case of Personal bills has not been followed in the case of bills for reversing attainders, for the restoration of honours and lands, and for restitution in blood. These bills are first signed by the King and are presented by a lord to the House of Peers (*b*) by command of the Crown (see p. 463) ; after which they pass through the ordinary stages of public bills, and are sent to the Commons. Here the King's consent is signified before the first reading (*c*). The customary practice is then to read the bill the first and second time and to commit it to a select committee (*d*) consisting of several members specially nominated forthwith without previous notice of their names and of " all the members of this House who are of his Majesty's most honourable Privy Council, and all the gentlemen of the long robe " (*e*). On the report of the bill from the select committee, the bill is appointed for third reading upon a future day (*f*). Such a bill receives the Royal Assent in the form " *soit fait comme il est désiré* " (*g*).

### ROYAL ASSENT AND CLASSIFICATION OF STATUTES

The proceedings on Royal Assent, and the printing and promulgation of statutes, have already been described in Chapter XX (pp. 556, 563) ; but certain details relating to private Acts may here be given.

#### THREE CLASSES OF PRIVATE ACTS

After receiving the royal assent private bills have, since the beginning of the nineteenth century, been divided into three classes of Acts :

(*b*) Maxwell's Restitution Bill, 1848 ; Drummond's (Duke de Melfort's) Restitution Bill, 1853 ; Lord Lovat's Restitution Bill, 1854 ; Carnegie's Restitution Bill, 1855 ; Bruce's Restitution Bill, 1869 ; Earldom of Mar Restitution Bill, 1885 ; Alexander's Restitution Bill, 1916. For earlier cases, see Report of Precedents, L. J. (1824) 286 ; Clifford, i, 361.

(*c*) In 1853 Drummond's (Duke de Melfort's) Restitution Bill, on being brought from the Lords, was read the first time without the Queen's consent having been signified. On the following day these proceedings were declared to be null and void ; the Queen's consent was signified, and the bill was then read the first and second time, and committed to a select committee, C. J. (1852-53) 575, 576, 578. In the case of Alexander's Restitution Bill, the King's consent was signified after the first reading and immediately before the second reading of the bill, C. J. (1916) 82.

(*d*) C. J. (1852-53) 578, 584 ; *ibid.* (1854) 361 ; *ibid.* (1868-69) 78, 81 ; *ibid.* (1884-85) 374 ; *ibid.* (1916) 82.

(*e*) These words were not added when the committee was nominated, in the case of the Earldom of Mar Restitution Bill, 1885, C. J. (1884-85) 374 ; Parl. Deb. (1885) 300, c. 685 ; or of Alexander's Restitution Bill, 1916, C. J. (1916) 82.

(*f*) C. J. (1884-85) 381 ; *ibid.* (1916) 87.

(*g*) L. J. (1824) 426 ; *ibid.* (1847-48) 365 ; *ibid.* (1854) 366 ; *ibid.* (1868-69) 97 ; *ibid.* (1916) 124. The Earldom of Mar Restitution Bill, 1885, received the Royal Assent as a public bill, L. J. (1884-85) 443

(1) Local and personal, declared public; (2) Private, printed by the King's printers; and (3) Private, not printed.

#### LOCAL AND PERSONAL ACTS

Until 1798 such Acts were printed with the other statutes of the year (*h*), and were not distinguishable from public Acts except by the character of their enactments; but since 1798 they have been distinguished and printed in the separate series known as "Local and Personal Acts." The chapter numbers of the public and general Acts are in arabic numerals, those of the local and personal in small roman numerals. The private Acts (of which there are nowadays few) are numbered in italicised arabic figures. Since 1868, certain statutes previously included among the public general Acts, have been transferred to the category of the local and personal Acts. They are Acts which, though passed as public bills, are local in their character, and Acts for the confirmation of Provisional Orders (*i*).

Every local and personal Act passed before the year 1851 contained a clause declaring that it "shall be a public Act, and shall be judicially taken notice of as such" (*k*). But by Lord Brougham's Act of 1850, for shortening the language of Acts of Parliament, the insertion of this "public" or "evidence" clause in every local and personal Act was rendered unnecessary by a general enactment (*l*). The 1850 Act was repealed and replaced by the Interpretation Act, 1889, which declares that every Act, unless it contains an express provision to the contrary, shall be a public Act and shall be judicially taken notice of as such.

#### PRIVATE ACTS PRINTED

From 1798 to 1815 the private Acts, not declared public, were not printed by the King's printers, and could only be given in evidence by obtaining authenticated copies from the statute rolls in the Parliament Office. But since 1815, the greater part of such private Acts have been printed by the King's printers, and have contained a clause declaring that a copy so printed "shall be admitted as evidence thereof by all judges, justices, and others." Since 1851 this "evidence clause" has been retained, with the addition of an enactment that the "Act shall

(*h*) They are omitted, to save space, from the revised editions of the statutes periodically issued by the Statute Law Revision Committee, now the Statute Law Committee.

(*i*) These Acts are specially distinguished in the volumes of the Local and Personal Acts in which they are included.

(*k*) The practice of declaring particular Acts of a private nature to be "public Acts" began in the reign of William and Mary, and was soon extended to nearly all private Acts by which felonies were created, penalties inflicted, or tolls imposed. In one or two special cases, occurring between 1798 and 1851, local and personal Acts, which were of an unusually public character, not only contained the ordinary "public" clause, but were printed among the public general Acts (Manchester Stipendiary Magistrates Acts, 53 Geo. 3. c. 72; 7 & 8 Vict. c. 30; and Manchester Warehousing Act, 7 & 8 Vict. c. 31).

(*l*) 13 & 14 Vict. c. 21.



not be deemed a public Act.” These Acts are now mainly Estate Acts (*m*).

#### PRIVATE ACTS, NOT PRINTED

The last class of Acts are those which still remain unprinted : it includes name, naturalization, divorce, and other strictly personal Acts (*n*). Their numbers are falling ; naturalization, for instance, is now administered by the Home Secretary under powers in a general Act, and divorce Acts have disappeared since the constitution of the Irish Free State, now Eire, and the grant of large powers to the Northern Ireland Parliament.

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(*m*) A list of these “private Acts, printed by the King’s printers, and whereof the printed copies may be given in evidence,” used to appear in the “Table of the Titles of the Local and Private Acts passed during the Session,” appended to the annual volume of the Public General Acts. (*Cf.*, *e.g.*, the volume of 1919, p. 578.) The table has been omitted from those volumes since 1920, but an official list and index of the local and personal and (if any) private Acts of the year is published separately.

(*n*) A list of these “private Acts, not printed” appears in the table and list mentioned in the preceding note.

## CHAPTER XXXV

# PROVISIONAL ORDERS AND CERTIFICATES ; SPECIAL ORDERS

### PROVISIONAL ORDERS

The system of legislation by provisional order enables government departments to deal in detail with many undertakings with which Parliament would otherwise be asked to deal *ab initio* in a private or public bill.

These subjects of provisional legislation are for the most part, but by no means always, of a local character. Under various Acts of Parliament most of the departments are now empowered to issue provisional orders (usually upon the application of parties interested) which in their scope and object are practically private bills, or to make provisional orders (in some cases on their own initiative) for other purposes. Thus the departments are the "promoters" and the parties interested (if any) are the "applicants." The objects obtainable by provisional order are limited to those specified by the particular enabling Act. Such orders are scheduled to a bill, which is brought in by the government department and which declares the expediency of their confirmation ; and in this form they are submitted to Parliament for consideration.

#### ORIGIN AND EARLY HISTORY OF PROVISIONAL ORDERS

The origin of the provisional order method of legislation is to be found in the desire to lighten the expense of parties promoting private legislation, and in the necessity of reducing the number of private bills which came before committees of the House. The latter necessity became very pressing in and after 1844, when a flood of private bills began to congest business ; cheaper legislation for the benefit of the people was a sequel to the spread of Benthamite ideas, and to the rapid growth of new types of promoters of private legislation.

The earliest method of getting over these difficulties was found in the adoptive Act. The Lighting and Watching Act of 1833, an earlier Act on the same lines relating to Ireland (9 Geo. 4, c. 46), and the Police Act in Scotland of 1833, contained provisions which parishes could adopt without coming to Parliament for separate bills. Again the Inclosure Act of 1845 had created Inclosure Commissions, who on request by the applicants for an inclosure were empowered to set forth in a provisional order the terms and conditions of an inclosure that, after inquiry, they thought expedient (a). These provisional orders were, however, confined

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(a) Similar powers were possessed by the Tithe and Tidal Harbour Commissions.

to stating terms and conditions. The commissioners made an annual report to Parliament concerning the expediency of the proposed inclosures, and Parliament took action on this report and legislated in accordance with the terms set forth in the provisional order. In 1846 a select committee was appointed "to examine the Applications for Local Acts during this Session of Parliament; to examine especially in respect to the Bills for the Erection of new Waterworks, Drainage, and Paving, and Improvements, according to the Recommendations made by the Commissioners of Inquiry into the means of Improving the Health of Towns and densely populated Districts; and to ascertain how far the Principle of their Recommendations may be carried out in relation to the Bills proposed, and whether any and what measures may be recommended for Adoption by the House thereon." This committee and another select committee appointed in 1847 both recommended the passing of adoptive Acts relating to a number of subjects, and in 1847 the Waterworks Clauses Act, Town Police Clauses Act, and other Acts of a similar nature were passed.

Another recommendation of the select committee of 1846 was that greater use should be made of the principle of preliminary local inquiry.

The result of this latter recommendation of the select committee was the passing of the Preliminary Inquiries Act of 1846, which compelled local inquiries to be made by officers of the Commissioners for Woods, Forests, Land Revenues, Works and Buildings, or of the Admiralty, before an application for a private bill was made to Parliament.

The preamble of this Act began with the words "Whereas it is expedient that Facilities should be given for procuring more complete and trustworthy Information previous to Inquiries before either House of Parliament on Applications in certain cases for local Acts." Private bill committees had felt the lack of unprejudiced information about the bills before them. Opposition came only from those who could afford it, and who were directly interested. There was no one to represent the interests of the public at large, which were often greatly prejudiced. And, as the select committee of 1846 observed, some provisions in local bills were "so contradictory and mutually discordant as to render their enforcement impossible" (b).

In spite of all this, practically no notice of these inquiries was taken by Parliament. The failure of the scheme was attributed in 1858 by the Clerk of the House of Commons (c) to the following causes: (1) that the reports of the officers conducting the inquiries were not final, and that the whole matter had therefore to be brought before Parliament at a subsequent stage; (2) that because the officers were not appointed by Parliament, their reports were therefore received by Parliament with "jealousy, suspicion, and disfavour"; (3) that the officers appointed were not persons of standing and authority. He then commented on Parliament's great jealousy of the executive departments, and the small regard paid to any tribunal not constituted by Parliament itself.

The Preliminary Inquiries Act of 1846 was repealed and replaced in 1848 by an Act which made inquiries compulsory only in the case of

(b) H. C. 556, Session 1846, p. iv.

(c) Evidence of Sir Erskine May before Select Committee of House of Lords on Proceedings in Parliament on Private Bills, 1858, p. 13.

those bills within the sphere of interest of the Commissioners for Woods, Forests, etc. The Preliminary Inquiries Act of 1851 repealed the Act of 1848, and gave a discretionary power to the Admiralty to appoint commissioners to hold inquiries.

Meanwhile the Public Health Act of 1848 had been passed. This set up the General Board of Health, who could send inspectors to make an inquiry in any district, and could then in certain cases make a provisional order applying parts of the Act to the district; in other cases parts of the Act were applied by Order in Council. The first provisional orders under this Act received the Royal Assent in the Session of 1850.

This system lasted for ten years, till the Public Health Act was amended by the Local Government Act of 1858. This Act, which could be adopted by localities, authorized the setting up of local boards, who were enabled, in such matters as the compulsory purchase of land, to apply to the Secretary of State for a provisional order. The Secretary of State was then to institute a local inquiry and, if the proposal was justified, to bring the resulting provisional order before Parliament in a confirmation bill.

What is practically the present method of making provisional orders had thus been evolved by 1858. In subsequent years the practice became more firmly established, and the power of granting a provisional order was gradually extended to other government departments.

#### PRELIMINARY PROCEEDINGS ON A PROVISIONAL ORDER

Prior to their introduction in a confirming bill, Parliament takes no cognizance of provisional orders; and, with one or two exceptions mentioned later (p. 980), the standing orders regulating the preliminary proceedings in the promotion of a private bill are not applicable to a provisional order. Those interests, however, which in the case of a private bill are protected by the standing orders, do not suffer; for in this respect the government department takes the place of Parliament, and in the promotion of a provisional order secures the observance of rules and regulations—similar in nature and effect to the standing orders—as to notice by advertisement of the objects of the order, notice to owners and occupiers, consents, and deposit of documents, and as to other matters which are laid down by the provisions of the enabling Acts or made by the department.

An important and very frequent feature in the departmental procedure on provisional orders is the *preliminary local inquiry* which, under many of the enabling Acts, has to be held into the merits of an undertaking proposed to be authorized through a provisional order. In some cases this inquiry is obligatory, if it be deemed advisable to proceed with the proposed undertaking; while in others the inquiry is only held if thought expedient. The inquiry is public, and held in the locality affected by the proposed order, after due notice, by an officer of the department, or other properly qualified person, who makes a report on the case to the department.

These preliminary proceedings, however, being distinctly departmental and apart from the practice of Parliament, will not be noticed in detail. For the necessary procedure in each case, reference must be made to the

special provisions of the enabling Act, and to the instructions issued by the government department empowered to deal with the particular subject.

#### SCOPE OF CHAPTER

The number of enactments under which provisional orders may be made is large, as is also the number of the departments of Government by which they may be made. Moreover the situation is ever-changing, consequent upon the passage of new and consolidating Acts. It is not proposed, therefore, in this chapter to insert a list of those enactments or of the purposes for which, and the departments by which, provisional orders thereunder may be made. The "Index to the Statutes in Force," which is normally published annually under the general direction of the Statute Law Committee, gives under the heads "Provisional Order, Certificate and Scheme" and "Provisional Order, Scotland" (*d*), the necessary information grouped according to the various departments by which the order-making power is exercisable (*e*). There are, however, a few enactments conferring on the Minister of Health far-reaching powers under which the bulk of the provisional orders are made which are too important to be passed over in silence, and there are certain enactments of an exceptional character or which require an exceptional procedure in Parliament which must also be mentioned. Finally, the ordinary procedure in Parliament on the confirming bills will be described.

#### CERTAIN POWERS OF THE MINISTER OF HEALTH

The following important powers of the Minister of Health must be mentioned :

- (1) Power by provisional order wholly or partially to repeal, alter, or amend local Acts dealing with the same subject-matter as the Public Health Acts (*f*).
- (2) Power by provisional order to authorize the compulsory acquisition of land by local authorities in the circumstances mentioned in section 160 of the Local Government Act, 1933.
- (3) Power exercised through boundary commissions to alter the boundaries of counties and county boroughs by provisional order.

As regards (2) many recent Acts authorize the compulsory acquisition of land by means of departmental orders without any reference to Parliament,

(*d*) The head "Provisional Order, Scotland" includes provisional orders under the Private Legislation Procedure (Scotland) Act which is dealt with in Chapter XXXVI.

(*e*) In some cases the departmental orders are provisional and require confirmation by Parliament only if they are objected to by specified authorities or persons.

(*f*) Public Health Act, 1875, s. 303, as amended by the Public Health Act, 1936, s. 317 (the power does not extend to London). See also s. 116 (6) of the Act of 1936. As to other powers of amending local Acts, see Local Government Act, 1933, s. 148 (1) (*e*) and proviso; and Land Drainage Act, 1930, s. 41 (Minister of Agriculture and Fisheries).

such orders being known as "Compulsory Purchase Orders" (g). As regards (3) by s. 3 of the Local Government (Boundary Commission) Act, 1945, the Minister is required to confirm by provisional order any order by the boundary commissioners altering or maintaining the boundaries of a county or county borough made either by direction of the Minister, on their own initiative or on application by a county council or county borough.

#### INCLOSURE AND REGULATION OF COMMONS

The Minister of Agriculture and Fisheries is empowered to issue provisional orders under the Commons Act, 1876, for the regulation or for the inclosure of a common. A special procedure is laid down in the House of Commons of which mention must be made here. The application for the order is to be made by persons interested in any common, representing at least one-third in value of the interests proposed to be affected. If on consideration of the application it be deemed expedient to proceed with the case, a report, certifying the expediency of the provisional order is made to Parliament by the Minister and is referred to a committee specially appointed by the House of Commons to consider, and to report upon, every such report "before a bill be brought in for the confirmation of such order" (h). This committee is known as "*The Select Committee on Commons*" and is usually nominated partly by the House and partly by the Committee of Selection. The committee require the Minister to give notice, in the locality affected, of the meeting of the committee so that persons objecting to the order may appear and be heard (i). Objectors may also present petitions to the House, and these petitions are referred to the committee (k). Witnesses before the committee are not sworn. The committee have no power to amend any order but report whether it should be confirmed and, if so, whether with or without modification. The reference of the order to the Select Committee on Commons does not dispense with its subsequent consideration by the committee to whom the bill for its confirmation may be referred by the Committee of Selection (l).

#### CHARITY SCHEMES

By the Charitable Trusts Acts, 1853 to 1925, where a new scheme for the management of a charity cannot be carried into complete effect by the

(g) *E.g.* Town and Country Planning Act, 1932, s. 25; Housing Act, 1936, ss. 29, 32, 36, 38, 74; Water Act, 1945, s. 24, by Minister of Health; Small Holdings and Allotments Act, 1908, s. 39, as amended and applied by Small Holdings and Allotments Act, 1926, ss. 4 and 17, by Minister of Agriculture and Fisheries; Air Navigation Act, 1936, s. 9, by Secretary of State for Air; Public Works Facilities Act, 1930, s. 2, by the appropriate Minister; the Education Act, 1944, s. 90, by a local education authority and confirmed by the Minister of Education; the Town and Country Planning Act, 1944, s. 1, by the Minister of Town and Country Planning; Distribution of Industry Act, 1945, s. 12, by the President of the Board of Trade; Town and Country Planning (Scotland) Act, 1945, s. 1, by the Secretary of State for Scotland, etc. See also s. 161 of Local Government Act, 1933, an enactment not infrequently applied by local Acts, especially in the case where the land to be purchased is required for the purposes of an electricity sub-station, *e.g.* Rhyl Urban District Council Act, 1934, s. 32. In the case of electricity and gas undertakings, Special Orders (see p. 984) can authorize the compulsory acquisition of land.

(h) C. J. (1879) 29, 170; *ibid.* (1898) 79, etc.; *ibid.* (1924) 242, 311.

(i) These notices are given in compliance with the wishes expressed by the committee in 1877 and 1878.

(k) C. J. (1878-79) 163.

(l) C. J. (1898) 126, 134, 183; *ibid.* 213, 214, 268, etc.

Court of Chancery or other court under the jurisdiction created by the Act, or otherwise than by the authority of Parliament, the Board of the Charity Commissioners (on the application of the trustees or others concerned in the management, or interested in the benefits, of a charity, or upon the report of an inspector, or upon information otherwise obtained by the Board) are enabled provisionally to approve and certify a new scheme which, set forth in all its details in an annual report to Parliament, may be confirmed by an Act of Parliament, such Act to be deemed a public general Act (*m*). The confirming bill has always been treated throughout as a public bill and has been taken at the time of public business (*n*). In relation to solely educational charities, the Ministry of Education are in the same position as regards schemes which require confirmation by Parliament as the Charity Commissioners in relation to non-educational charities (*o*). Sometimes when the charity is in part educational there is a joint scheme of the two bodies (*p*).

#### PROVISIONAL ORDERS IN SCOTLAND

Under the Private Legislation Procedure (Scotland) Act, 1936, the Secretary of State for Scotland possesses very extensive powers of making orders that are submitted to Parliament for confirmation in a bill. The system set up by the original Act of 1899, as amended by an Act of 1933 and consolidated by the Act of 1936, differs so much from the ordinary system of granting provisional orders that it is dealt with separately in the ensuing chapter. But the Act does not affect the power which, at the time of the passing of the original Act of 1899, was already vested in the Secretary for Scotland (as he then was) of granting provisional orders under other Statutes; nevertheless, the special procedure prescribed by section 9 of the Act in regard to bills for the confirmation of certain orders issued under its provisions (see p. 995) is made applicable, with the necessary modifications, to bills for the confirmation of orders made by the Secretary of State under the provisions of any Act for the time being in force and passed before 10 August 1899. These bills have proceeded under section 9 of the Act except that they have been referred after first reading to the Examiners (*q*). By far the most important of the Acts conferring powers of making provisional orders on the Secretary of State and passed before 10 August 1899, is the Burgh Police (Scotland) Act,

(*m*) Charitable Trusts Act, 1853, ss. 54-60.

(*n*) Jewish United Synagogues Bill, 1870; Sunderland's Charity Bill, 1891; Addenbrooke's Hospital Bill, 1903; Maidstone Bread Charities Bill, 1931-32, etc. In 1867 John Kendrick's Loan Charity (Reading Grammar School) Bill was a private bill.

(*o*) See Board of Education Act, 1899, s. 2 (2), and Board of Education (Powers) Orders in Council, 1900-1902; e.g. Board of Education Scheme (Devon, Crediton Exhibition Foundation) Confirmation Bill, 1929-30.

(*p*) Epsom College Bill, 1931-32.

(*q*) Paisley Gas and Water P.O. Bill, C. J. (1906) 331, 337; Kirkwall Water P.O. Bill, 1909; Kilmarnock Gas P.O. Bills, 1912-13, 1922, 1931-32, C. J. (1931-32) 21, 255; Kilmarnock Gas Order Confirmation Bills [Lords], 1914-16, 1927, C. J. (1927) 291; Kilmarnock Water P.O. Bills, 1922, 1928-29, 1929-31, C. J. (1929-30) 24; Kilmarnock Gas and Water P.O. Bill, C. J. (1924-25) 183; Inverness Water and Gas P.O. Bills, 1914 and 1920, C. J. (1920) 341-42; Perth Corporation P.O., Hamilton Water and Gas P.O., Paisley Gas P.O. Bills, 1921, C. J. (1921) 93, 149, 244-45, etc.

1892. Provisional orders issued under Acts conferring provisional order powers on the Secretary of State and passed after 10 August 1899, follow the ordinary procedure of the House on such orders and the right of any person to apply for, or the powers of any other department to make or confirm provisional orders under any Act in force and passed before 29 July 1933, is specially safeguarded (r).

#### PROVISIONAL CERTIFICATES

In addition to his powers of making provisional orders under various Acts, the Minister of Transport is empowered to grant provisional certificates for matters relating to railways, in pursuance of several statutes presently to be mentioned. A provisional certificate is similar to a provisional order, its purpose being to facilitate and simplify legislation in matters otherwise the subject of a private bill. If it is unopposed, it does not require to be submitted in a bill for the purpose of confirmation by Parliament. But if there is opposition from a railway or canal company affected by the certificate, notice of such must be lodged at the Ministry of Transport, within a prescribed period, and the certificate, scheduled to a bill, is submitted to Parliament for confirmation, and thereafter treated in the same manner as an opposed provisional order.

These certificates may be granted :

- (1) For giving new powers to railway companies under the Railway Companies' Powers Act, 1864, and the Regulation of Railways Act, 1868 ;
  - (2) For authorizing the construction of railways, or works, or deviations under the Railways Construction Facilities Act, 1864 ;
- and the procedure is governed by these Acts as amended by the Railway (Powers and Construction) Act, 1864, Amendment Act, 1870. (s)

#### PROCEDURE IN PARLIAMENT ON BILLS FOR CONFIRMING PROVISIONAL ORDERS

The procedure that is followed in Parliament upon bills for confirming provisional orders and certificates may be shortly stated. It applies to all such bills with the exception of those few cases, already noticed, where a different procedure in part or in whole is expressly prescribed. The bills are introduced as public bills in either House according to the discretion of the department responsible for them.

Since the revision of 1945, the orders of both Houses relating to bills confirming provisional orders or certificates—referred to for the purposes of the standing orders as Confirming Bills—have been consolidated, assimilated with those of the other House, and collected together so as to read consecutively. These are S.Os. 178–186 (H. L.) and 211–217 (H. C.). The provisions of these orders, allowance being made for slight variations due to differences in general practice, lay down practically identical procedure. S.Os. 178 (H. L.) and 211 (H. C.) define the meaning of “Confirming Bill” in the orders which follow, and exclude from

(r) Private Legislation Procedure (Scotland) Act, 1936, s. 16 (2).

(s) Future recourse to this procedure is believed to be unlikely.



their operation provisional orders issued under the Private Legislation Procedure (Scotland) Act, 1936, and bills to confirm such orders.

**Introduction of Bill to Committee Stage.**—By S.Os. 182 (H. L.) and 210 (H. C.) no provisional order confirmation bill, originating in either House, is to be read a first time after 15 May except in the course of a session which commences before that date in the same year (*t*). After first reading all such bills are referred to the Examiners, before whom compliance with two standing orders must be proved. The first of these orders, S.O. 179 (H. L.) and 212 (H. C.), lays down that whenever plans, etc., are deposited with any public department in relation to any provisional order or certificate by which it is proposed to authorize the compulsory acquisition or user of land or the construction or alteration of works, duplicates of these documents must be deposited at the appropriate office of the respective House. Any deposits made after the prorogation of Parliament and before 20 November must be deposited on or before 20 November. S.O. 179 (H. L.) also provides that, if at the time when such a document was deposited with the public department it was not known whether the order or certificate to which it referred would or would not be a provisional order or certificate, duplicates of it are to be deposited on or before the date of the Confirming bill into either House. The second order—S.O. 180 (H. L.) and 213 (H. C.)—applies to Confirming Bills S.O. 47 (of both Houses) providing for the deposit of statements relating to working-class houses when power to acquire land is proposed to be conferred, revived or extended by a private bill. By S.O. 181 (H. L.) and 214 (H. C.) the Examiner, who must give two clear days' notice of the date of examination (*u*), is to report whether the two preceding orders have or have not been complied with, stating his reasons and any special circumstances if his report is adverse ; and the appropriate standing orders relating to the examination of private bills are applied to his procedure. Also, this standing order provides for the deposit of memorials complaining of non-compliance, the Examiner's power to entertain a memorial even though not signed by the person specially affected, and the examination of bills originating in the other House only in respect of standing orders not previously complied with ; and for examination as to compliance, where provisions have been inserted in a Confirming Bill, in the other House to which, had the bill been a private bill, the standing orders would apply. S.O. 183 (H. L.) applies to Confirming Bills S. O. 100 of that House relating to private bills (no second reading before certificate of compliance, etc., see p. 962). In the Commons, as soon as the Examiners report that no standing orders are applicable or that the standing orders applicable to the bill have been complied with—or, in the case of a non-compliance, as soon as the Standing Orders Committee report that the standing orders should be dispensed with—a provisional order confirmation bill is ordered to be read a second time usually on the following—but sometimes on a future—day. In the case of a non-compliance where standing orders are not dispensed with,

(*t*) For a case of suspension of this provision in the Commons see C. J. (1921) 208.

(*u*) The Lords' order adds that he may not give notice until after the bill has been printed by order of the House.

no further proceedings take place on the bill unless the House takes further action in the matter.

On second reading and other stages in the House Members may object in the same way as to a private bill, and opposed provisional order bills are dealt with as opposed private business and may be set down by the Chairman of Ways and Means for 7.30 p.m. under the terms of S.O. No. 6 (Public).

**Committee Stage.**—The deposit of petitions against Confirming Bills and proceedings in committee on such bills are regulated on similar lines but in slightly varying forms by S.Os. 184 and 185 (H. L.) and 217 (H. C.). In the Lords, petitions against such bills must be presented on or before the seventh day after the second reading, or, in the case of a bill brought from the Commons, on or before the seventh day after first reading. Every provisional order confirmation bill, as respects any unopposed orders, is referred to the Chairman of Committees to be dealt with in the same way as an unopposed private bill and, as respects any opposed orders, is referred to a select committee of five Lords and proceeded with as an opposed private bill. By S.O. 186 (H. L.) certain other standing orders relating to private bills are made applicable to Confirming Bills (powers of the Chairman of Committees, and printing and withdrawal of petitions).

Provisional order confirmation bills are then considered in a Committee of the whole House and proceed thereafter as public bills.

In the Commons, after second reading, provisional order bills are committed and stand referred to the Committee of Selection (a), and are subject to the standing orders regulating the proceedings on private bills so far as they are applicable (b). The time before which petitions against such bills have to be deposited has already been stated (see pp. 870-71). In accordance with S.Os. 215 and 217 the proceedings of the committee to which the bill is referred (see ch. XXXIII), and of the Court of Referees (see p. 874), are conducted in like manner as in the case of private bills and are subject to the same rules and orders of the House so far as they are applicable. Instructions to committees on such bills are governed by the same principles as instructions to committees on private bills (c) (see p. 903). No "filled-up" bill is required to be deposited and no report from the Attorney General under S.O. 158 is required. If all the orders or certificates scheduled to a confirming bill are unopposed, the bill is treated by the Committee of Selection as an unopposed private bill and referred to the Committee on Unopposed Bills, otherwise the bill is referred to an ordinary private bill committee.

(a) S.O. 217. For certain cases where provisional order bills have been referred to a joint committee, see Railway Rates and Charges P.O. Bills, C. J. (1890-91) 129; (1892) 62; Canal Rates, Tolls, and Charges P.O. Bills, C. J. (1893-94) 251; (1894) 123; (1895) 230; (1896) 50; Ministry of Health P.O. (Birkenhead Extension) Bill [Lords] and (Widnes Extension) Bill [Lords], C. J. (1920) 224, 251; or to a specially constituted committee, see Government Departments (Transfer of Powers) P.O. Bills, C. J. (1889) 268; Local Government P.O. (Poor Law) Bill, C. J. (1893-94) 313; Trade Boards Act P.O. Bills, C. J. (1913) 174; (1914) 247.

(b) S.O. 217 (S.O. No. 46 (Public) does not apply).

(c) For a mandatory instruction to divide a bill into two portions (before S.O. 217 existed), see C. J. (1893-94) 313, and Parl. Deb. (1893) 12, c. 1230; also Parl. Deb. (1904) 136, c. 109. For other instructions, see, *inter alia*, C. J. (1893-94) 359; Parl. Deb. (1896) 39, c. 941-48; C. J. (1899) 284; Parl. Deb. (1899) 414-31.

In committee on an opposed provisional order bill where, as is usually the case nowadays, one order only is scheduled to the bill, the consideration of the preamble and clauses of the bill is postponed until the scheduled order has been considered. Procedure follows that on a private bill, but the question "That this order be confirmed" or "be confirmed subject to modifications," is put on the conclusion of the case. If, however, more than one order is scheduled to the bill the question is put separately at the conclusion of the case on each order—opposed orders being considered before unopposed orders. Where any order is confirmed subject to modifications, the committee then make the necessary amendments. After all the orders have been considered, the preamble and clauses of the bill are agreed to or amended and agreed to and the bill is ordered to be reported to the House (*d*).

S.O. 217 provides that the committee to whom a bill containing any opposed order or certificate is referred shall consider all the orders or certificates comprised in the bill and may divide the bill into two bills, dealing with the opposed and unopposed orders or certificates respectively and report them separately (*e*).

**Amendments to Provisional Order Bills.**—In either House the Committee to which a provisional order confirmation bill is referred may amend the order if the proposed amendment is of such a nature that it would have been within the powers of the department by which the order was made to incorporate it in the order as issued. Such amendments are made in the text of the scheduled order, and a consequential amendment is made in the confirmatory clause in the bill itself by inserting the words "as amended" after the word "which" in the sentence which usually runs "The order . . . which is set out in the Schedule to this Act is hereby confirmed" (*f*). But no new matter should be introduced into the scheduled order which would be inconsistent with or go beyond the public notice and advertisement for the purpose of the order required by the Act in pursuance of which the order is issued or by regulations made under that Act. It has also been held undesirable that new matter of this kind should be introduced into the confirming bill.

In 1901 the committee on the Local Government Provisional Orders (No. 7) Bill (which comprised orders relating respectively to South Shields and to other places), inserted provisions affecting the boundary of the borough of South Shields, and stated their reasons for doing so in their report on the bill. The bill was thereupon referred to the Examiners with respect to compliance with the standing orders. The Examiners made a special report, stating that, if it was intended that the bill should be treated as a private bill, the standing orders had not been complied with, inasmuch as no notice had been given of the powers sought in clause 2, as amended by the committee, but that the standing orders did not contemplate the examination of confirmation bills except in regard to the standing orders with which compliance is required in the case of such bills and with which compliance had in this case

(*d*) For a special report, see C. J. (1920) 276.

(*e*) For a case where this order (then 208a) was suspended and an instruction was given to the Committee of Selection, see C. J. (1909) 162.

(*f*) Contrast s. 1 of Ministry of Health P.O. Confirmation (Leicester and Warwick) Act, 1935, with s. 1 of Ministry of Health P.O. Confirmation (Cumberland and Lancaster) Act, 1935.

been already proved. The Standing Orders Committee, to whom this report was referred, reported that no standing orders not previously inquired into were applicable. On consideration of the bill as amended, clause 2, by which the South Shields boundary was altered, was omitted (*g*).

As respects amendments which are outside the limits of the powers conferred by the Act under which the provisional order is made, the practice of Parliament has changed in recent years. Formerly it was the practice to allow such amendments to be made in the body of the confirming bill either as introduced or by way of amendment in committee (*h*). For instance, in all bills confirming Electric Lighting Orders a clause for the protection of county bridges (which was then considered to be *ultra vires* of such orders (*i*)) was inserted in the body of the bill. It has, however, in recent years been considered that this practice is undesirable. If Parliament has imposed limits on the purposes for which the provisional order machinery may be used, it is not thought proper to use that machinery to accomplish objects beyond those limits. If the limits are found too restrictive, it has been held that the proper course is by Act to extend the limits generally (*k*), not to legalize the transgression of the limits by the insertion of an *ad hoc* provision in an Act, the sole purpose of which is the confirmation of one or more orders made under restricted powers. It is, therefore, the practice in the committee stage of a bill to confirm a provisional order, not to entertain an amendment which goes beyond the scope of the powers conferred by the Act under which the order is made, on the ground that such amendment thereby falls outside the scope of the confirming bill.

**Later stages.**—Provisional order bills are not usually reprinted as amended unless important amendments have been inserted or some other reason makes this desirable.

On being reported, a provisional order bill is ordered to be considered (*l*), if amended—or, if not amended, to be read the third time—on the

(*g*) C. J. (1901) 290, 302, 307, 318, 323, and Minutes of Evidence, Group N, 19–28 June and 2 July 1901.

(*h*) The practice was adopted in deference to the wishes of the Local Government Board (the predecessor of the Ministry of Health) who objected, on the question of precedent, that an order emanating from them should contain provisions which they were not authorized by the enabling Act to have inserted in the order.

(*i*) The clause has since been held to be *intra vires*, and it is now regularly included in Electricity Special Orders (see p. 985) which, since 1919 (see Electricity (Supply) Act, 1919, s. 26), have as respects electricity undertakings superseded provisional orders. For other instances of the introduction in Confirming Acts of clauses which were considered to go beyond the powers conferred by the Act under which the provisional order was made, see Local Government Board's P.O.s Confirmation (No. 5) Act, 1911; Pier and Harbour Orders Confirmation (No. 1) Act, 1911; Education Board P.O.s Confirmation (London) Act, 1911 (sections 2 to 11 of this Act), are an example of the lengths to which the practice was carried; Local Government Board's P.O.s Confirmation (No. 6) Act, 1914, etc., etc.

(*k*) This was the course adopted in the case of the Provisional Orders (Marriages) Act, 1905. It was held that the Act did not justify the insertion in orders made under it of a provision exempting from liability Ministers of religion who had solemnized the marriages whose invalidity the orders removed. An amending Act was passed in 1924 which authorized the incorporation in such orders of the necessary indemnity.

(*l*) For a case where a provisional order bill was recommitted with an instruction to re-instate an order which had been reported "Parties do not proceed," see p. 947 and C. J. (1913) 305, 337, 354; for a bill recommitted to a select committee, see C. J. (1901) 374.

following (or a future) day (*m*). It may be noted here that S.O. 224, which lays down the procedure in the case of a public bill where standing orders relating to private bills appear applicable, does not apply, but that both S.O. 169 (which requires a Financial Memorandum in the case of any bill in respect of which a grant from any government department is involved or has been promised) and S.O. 191 (whereby the House of Commons do not insist on their privileges with regard to any clauses sent down from the House of Lords which refer to tolls and charges for service performed, and are not in the nature of a tax or which refer to rates assessed and levied by local authorities for local purposes) apply to bills for confirming provisional orders or certificates. For provisions in a provisional order bill which create a charge upon the people or upon the public revenues, see p. 899.

#### FEES AND TAXATION OF COSTS

On the second reading of a provisional order bill the applicants for each order included in the bill are charged in each House a fee of £15. For proceedings before the Court of Referees or any committee the same fees are charged to applicants and opponents as in the case of private (local) bills, except that in the House of Lords fees are charged at the committee stage in the case of opposed bills only (*n*). By the House of Commons Costs Taxation Act, 1879, the powers of the taxing officer of that House were extended to costs in respect of a provisional order or certificate and for any bill confirming the same. He is also required to tax costs incurred in respect of any provisional order or certificate if requested to do so by a Secretary of State or by the Minister of Health.

#### PARLIAMENT ACT

A bill for confirming a provisional order is expressly excluded from the operation of the Parliament Act, 1911 (*o*).

#### SUSPENSION OF PROVISIONAL ORDER BILLS

Provisional order bills are, from time to time, suspended at the end of a session (*p*) in the same way as private bills and with certain minor differences follow the same procedure (see p. 957). The declaration that the bill is the same in every respect as the bill at the last stage of proceedings in the previous session is required to be made by or on behalf of the Minister responsible for the bill.

#### SPECIAL ORDERS

In recent years procedure by provisional order has to some extent been superseded by the more expeditious procedure of what are known as "Special Orders." The distinction between the two procedures

(*m*) Sometimes consideration and third reading are taken on the same day, C. J. (1928-29) 262; *ibid.* (1930-31) 157, etc.

(*n*) L. J. (1921) 355; *ibid.* (1922) 39, 46; C. J. (1922) 359

(*o*) S. 5. For printing among the statutes see p. 971.

(*p*) E.g. Ministry of Health P.O.s (No. 6) Bill, 1928, C. J. (1928) 314, 325; *ibid.* (1928-29) 14; Private Business (1928-29), p. 5. For a bill suspended over two sessions, see Ministry of Health P.O. (Cardiff Extension) Bill, 1921, C. J. (1921) 360, 363, 405; *ibid.* (1922) 11.

is that in the case of special orders Parliamentary sanction is given by means of affirmative resolutions passed by both Houses instead of—as in the case of provisional orders—by means of a confirming bill.

Special orders are of two classes—one those in the nature of public bill legislation, the other those in the nature of private bill legislation. The former has already been dealt with (see pp. 368-69); the present chapter is concerned with special orders of the second class alone.

Of these special orders by far the most numerous and important are those relating to gas and electricity undertakings. By section 26 of the Electricity (Supply) Act, 1919, "anything which under the Electric Lighting Acts may be effected by a provisional order confirmed by Parliament may be effected by a special order." By section 10 of the Gas Regulation Act, 1920, "anything which under the Gas and Water Works Facilities Act, 1870, or any Act amending the same may be effected by a provisional order confirmed by Parliament may, so far as those enactments relate to gas, be effected by a special order." The purposes for which gas special orders may be made are further particularized in sub-section (2) of the same section and are extended by section 7 of the Gas Undertakings Act, 1929.

The enactments which confer power to proceed by special order of this class provide that a special order is to be laid in draft before both Houses of Parliament, and is not to be made unless both Houses by resolution approve the draft either without modification or addition or with modifications or additions to which both Houses agree. In some cases (*e.g.* schemes under the Agricultural Marketing Act, 1931) the draft laid before Parliament is unalterable, and must be approved or disapproved in the form in which it is laid (*q*).

#### PROCEDURE IN THE HOUSE OF LORDS

The House of Lords by S.O. 203 regulate the procedure on special orders. This standing order provides for the appointment each session of a "Special Orders Committee" to which every special order stands referred so soon as it has been laid on the Table of the House. If the special order is of the class now being dealt with (that is to say, if it is of the nature of a private bill) a petition praying to be heard upon the merits against it may be presented by any person "who would have been entitled to petition against a bill containing the same provisions." Petitions must be presented by being deposited in the Office of the Clerk of Parliaments not later than the 14th day after the special order has been laid upon the Table (*r*). Every such petition stands referred to the Special Orders Committee, and in any proceedings thereon three (including the Chairman of the Committee) form a quorum. If no petition has been presented against the order the committee report to the House accordingly. If one or more such petitions have been presented the

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(*q*) Schemes under the Agricultural Marketing Acts may be either of the nature of a public bill or of a private bill. If they affect all producers of a particular commodity alike they are the former, if they affect producers in a particular locality only they are the latter.

(*r*) If this period of 14 days expires during a Parliamentary recess it is extended to the third ensuing day upon which the House sits for public business.

committee examine the order in connection with each such petition and consider—

- (i) whether the petition discloses sufficient grounds of complaint ;
- (ii) whether the matter has been so dealt with upon a departmental inquiry as that further inquiry is unnecessary ;
- (iii) whether the submissions in the petition could have been brought before a local inquiry and were not ;
- (iv) whether, having regard to the answers to the preceding questions and to the findings, if any, of these inquiries and to the other circumstances of the case, there ought to be a further inquiry by a select committee ;

and the Special Orders Committee report to the House accordingly. If the report is in favour of a reference to a select committee, the order and the petitions against it are referred to a select committee who proceed as in the case of a private bill.

No motion for an affirmative resolution of the House in connection with any special order is to be placed upon the Notice Paper until after the Special Orders Committee have reported thereon, and if the Special Orders Committee entertain doubt as to whether the order is *intra vires* their report must so state.

#### PROCEDURE IN THE HOUSE OF COMMONS

The House of Commons, on the other hand, have passed no standing order with respect to the procedure on special orders. The motions to approve the draft orders are put down on the Order Paper as part of the public business of the day. Being "exempted business" (s) they may, though opposed, be taken after 11 o'clock and are, in fact, almost invariably agreed to at that time. On their consideration amendments may in most cases be moved. There is also power under the general rules and practice of the House to move as an amendment to the question that the order be approved that any draft special order be committed to a select committee, and this course has on several occasions been adopted (t). The order appointing the select committee authorized the deposit of statements of objection against the special order within a limited time. These statements are now deposited in the Committee and Private Bill Office. The committee was to be appointed by the Committee of Selection and was ordered to proceed with the special order as if it were an ordinary provisional order bill under S.O. 159 (now 217) (u).

In the event of either House proposing to approve the draft order with amendments, the consideration of the confirming resolution in the other House is usually postponed or adjourned and resumed when it is possible to make the identical amendments in the draft order.

(s) See S.O. (Public Business) No. 1 (6).

(t) Barnsley Gas Special Order, 1923 ; Marple Gas Special Order, and Pinner Gas Special Order, 1924 ; Great Yarmouth Gas Special Order, 1924-25.

(u) C. J. (1924-25) 442-43 ; *ibid.* (1933-34) 321 (amendment not carried).

## CHAPTER XXXVI

### PRIVATE LEGISLATION PROCEDURE (SCOTLAND)

#### INTRODUCTORY

The Private Legislation Procedure (Scotland) Act, 1936, provides the machinery and prescribes the method by which parties must now proceed when they desire "to obtain parliamentary powers in regard to any matter affecting public or private interests in Scotland for which they would have been entitled before the commencement of the Private Legislation Procedure (Scotland) Act, 1899, to apply by a petition for leave to bring in a private bill." The 1936 Act, which may conveniently be referred to as the "Procedure Act," consolidates and supersedes the original Private Legislation Procedure (Scotland) Act of 1899 and an amending Act of 1933. Under the system so set up, instead of presenting a petition for a private bill, "they shall proceed"—to quote the directions of the Procedure Act—"by presenting a petition to the Secretary of State, praying him to issue a Provisional Order in accordance with the terms of a draft Order submitted to him or with such modifications as shall be necessary" (a).

#### SCOPE OF PROCEDURE ACT

The Procedure Act does not affect the powers which before 1899 were already possessed by the Secretary for Scotland (who since 1926 has been a Secretary of State) of making Provisional Orders under the provisions of statutes then in force. Nor does it affect the procedure specified in such statutes, except that, where the orders issued under their provisions require parliamentary confirmation, the confirming bill in its passage through Parliament shall follow the special procedure (see p. 995) which is laid down in s. 9 of the Procedure Act (b). The special procedure upon Orders under the Procedure Act, and upon the bills for their confirmation, differs from the procedure upon the ordinary Provisional Orders and Provisional Order bills described in the last chapter, because its object is to provide an inquiry in Scotland, instead of at Westminster, before commissioners taken from a panel primarily parliamentary, and at the same time to preserve in the two Houses of Parliament the final control of the legislative proposals.

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(a) Sec. 1 (1); for the development of this procedure see the Select Committee's Report on the Private Bill Procedure (Scotland) Bill, H. C. 307 (1898), especially the evidence of Lord Balfour of Burleigh and *cf.* Report and Minutes of Evidence of the Select Committee on the Private Legislation Procedure (Wales) Bill, H. C. 243, Q. 1165 (1904). As to county or town councils, promoting or opposing Orders, &c., under the Act, see sec. 11, which embodies, in the process of consolidation, the repealed s. 2 of the County Councils (Bills in Parliament) Act, 1903.

(b) Sec. 16. And *cf.* Constable, pp. 22, 23.



There is, moreover, an important difference of scope. The objects that can be obtained through an ordinary Provisional Order are confined, by the particular enabling Act under which it is granted, within very specifically defined limits; but the objects to be obtained through an order under the Procedure Act comprise almost every matter in Scotland in regard to which parties are entitled to seek parliamentary powers by the means of a private bill. The only objects expressly excepted are specified in s. 16 of the Act, which provides that the Act "shall not apply to Estate bills," and shall not

"affect the right of any person to apply for or the power of the Board of Trade or the Minister of Transport, or the Electricity Commissioners, or any other department to make or confirm provisional or other orders under the provisions of any Act for the time being in force and passed prior to the twenty-ninth day of July, 1933, or the procedure therein specified."

#### PRIVATE LEGISLATION AFFECTING "SCOTLAND AND ELSEWHERE"

When the 1899 Act created this special machinery for Scotland, the terms of s. 1 (1), it will have been observed, forbade the promoters of private legislation affecting Scotland to proceed by way of a bill except in the cases mentioned above. If therefore their proposals were to operate in England as well as in Scotland, they were obliged to introduce a bill so far as the operation concerned England and a draft provisional order so far as it concerned Scotland. This duplication was cumbrous and provisions which were initiated in identical terms for the two countries might end in two mutually divergent enactments. To avert this, the Chairman in practice would hold that the Scottish order was of such a character that it should proceed as a private bill; later the English and Scottish bills would be consolidated and passed into law as a single statute. In 1933 an amendment (now embodied in s. 1 (4) of the 1936 Act) provided a better way. Promoters may make a representation to the Secretary of State that they "desire to obtain parliamentary powers to be operative in Scotland and elsewhere, and that it is expedient that such powers should be conferred by one enactment by reason of the fact that it is necessary to provide for the uniform regulation of the affairs of an undertaking or institution carried on or operating in Scotland and elsewhere." Thereupon the Secretary of State and the Chairman consider the representation and, if of opinion that the powers (or some of them) would more properly be obtained by promoting a private bill than by the duplicate process of a bill for England and a draft order for Scotland, they notify their decision in the London and Edinburgh Gazettes and they report it to Parliament. When this is done, the restriction in s. 1 (1) of the Procedure Act ceases to apply as regards any powers to which the decision relates (c). Standing orders ensure

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(c) Sec. 1 (4). In view of s. 1 (1) it might be argued that there is a presumption that a private bill does not extend to Scotland unless expressed so to extend; if therefore, in pursuance of s. 1 (4), a bill is to extend to Scotland as well as England, it may be well that it should state expressly that it shall so extend. See s. 22 of the Methodist Church Act, 1939; see also s. 4 of the Royal Society for the Prevention of Cruelty to Animals Act, 1940, though it may be doubtful whether the latter Act falls within s. 1 (1) of the Procedure Act ("in regard to any matter affecting public or private interests in Scotland").

that the representation under s. 1 (4) be submitted to the Secretary of State in good time before the deposit of the bill (*d*).

#### THE "GENERAL ORDERS"

The provisions of the Procedure Act are supplemented, and the proceedings under it regulated in detail, by a number of "General Orders" made (in accordance with its provisions) by the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons, acting jointly with the Secretary of State, and laid before Parliament (*e*). The main aim of the Act being to provide a special machinery and procedure, in the promotion of undertakings in Scotland, in place of the proceedings upon a private bill in its preliminary and committee stages, these general orders will be found to correspond very largely to the standing orders of both Houses by which those stages are governed (*f*). The notices, deposits, and other preliminary requirements are, generally speaking, the same (*g*); and, in practice, the parliamentary Examiners appointed under standing orders act as the Examiners assigned for the purposes of the Act (*h*). Provision is also made for the incorporation, in any provisional order under the Act, of those general Acts or clauses which would be incorporated in it if it were a private bill (*i*).

#### APPLICATION FOR A PROVISIONAL ORDER

Petitions for the issue of a Provisional Order must be deposited at the Scottish Office, Whitehall, together with a draft of the proposed order, on or before the 27 November, or on or before the 27 March (*k*), two opportunities being thus given in each year of applying for parliamentary powers under the Act in place of the one opportunity that is open to the promoters of a private bill. A copy of the draft order must also be deposited with the Clerk of the Parliaments, the Committee and Private Bill Office of the House of Commons, the Treasury and other prescribed public offices (*l*).

**Petitions against.**—Except in the case of dissentient petitioners, petitions against a proposed Provisional Order must be deposited not

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(*d*) S.O. 231 (H. C.), 193 (H. L.).

(*e*) Sec. 15, 18. Following the revision in 1945 of the standing orders relative to private business in each House, it is anticipated that the present General Orders will shortly be revised.

(*f*) G. O. 1.

(*g*) G. O. 3-79. By G. O. 153 and 154, the provisions both of the Parliamentary Documents Deposit Act, 1837, as to documents deposited under the standing orders, and, *mutatis mutandis*, of the Parliamentary Deposits Act, 1846, as to money deposits in the case of private bills, are made applicable to the documents similarly deposited and to the money deposits similarly required under the general orders.

(*h*) Sec. 13; G. O. 2.

(*i*) Sec. 15 (2); G. O. 152.

(*k*) G. O. 2B.

(*l*) Sec. 1 (2); G. O. 37, 38.

later than six weeks after 11 December or 11 April, *i.e.* the final dates for the publication of notices (*m*).

#### REPORT BY THE CHAIRMEN (LORDS AND COMMONS)

The extent of opposition offered to the proposed provisional orders having thus been indicated, the draft orders applied for are taken into consideration, and are reported upon, by the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons (*n*), who are expressly empowered by the Act to determine all matters of practice and procedure necessary for this purpose (*o*), and who throughout are referred to as "the Chairmen" (*p*). The Chairmen's report upon each of the draft orders is made to the Secretary of State, and a copy is laid before Parliament (*q*). If it appears from their report that the Chairmen agree that the provisions or some provisions of a draft order "relate to matters outside Scotland to such an extent, or raise questions of public policy of such novelty and importance that they ought to be dealt with by private bill and not by provisional order" (*r*) the Secretary of State must, without further inquiry, refuse to issue the provisional order (or the portion of it) which is thus objected to. In this event, however, it is open to the promoters to proceed by way of a private bill—described as a "substituted bill"—for those powers which by the Chairmen's objection they are debarred from seeking through their proposed provisional order (*s*).

#### PROCEDURE FOR PROMOTION OF SUBSTITUTED BILLS

The promoters are required to communicate their intentions within a prescribed time to all opponents and must satisfy the examiners that they have duly done so (*t*). If they decide to proceed with a substituted bill, they must deposit copies of the bill in every public office where they had previously been obliged to deposit copies of their proposed provisional order (*u*). They must also satisfy the examiner that the bill so deposited does not contain any provisions not contained in the

(*m*) G. O. 82. In the case of any dissentient at the Wharnclyffe meeting held under G. O. 67-72 who would otherwise be precluded from presenting a petition in time, the time is extended. Provision is also made (in G. O. 84) to meet the case of petitioners complaining of matters arising subsequently during an inquiry held under the Act.

(*n*) The Act provides that "with a view to such report," the Secretary shall forthwith inform the Chairmen of any objections, &c., that have been duly made to the provisions of an Order, s. 2 (1).

(*o*) Sec. 2 (1); S.O. 226 (H. C.).

(*p*) They are so described in s. 1 (4) and in S.O. 225 (H. C.) and 201 (H. L.).

(*q*) Sec. 2 (1) (3); S.O. 227 (H. C.). 189 (H. L.).

(*r*) Sec. 2 (2). In 1908 the Chairmen reported that the Post Office Site (Glasgow) Order ought to be introduced as a public bill, Off. J. 1907-8, p. 19, *cf.* Post Office Sites Act, 1908.

(*s*) Sec. 2 (4); S.Os. 225, 232 (H. C.), 187 (H. L.). In the case where the Chairmen have reported that part, only, of a provisional order applied for should proceed as such, promoters can proceed with that part accordingly and embody the rest of their original scheme in a private bill. In some instances they have not elected to promote a bill in substitution for the part of their proposed order to which the Chairmen have objected, Off. J. 1902-3, p. 28, and 1903-4, p. 24.

(*t*) Sec. 2 (4); G. O. 82; S.O. 233 (H. C.), 195 (H. L.).

(*u*) S.O. 232 (H. C.), 194 (H. L.).

order for which it is substituted (*a*); and they must give any additional notices that may be required in connection with it under the standing orders (*b*). Subject to these conditions, however, the notices and deposits for the proposed order are held to have been served and made for the substituted bill, compliance or non-compliance with the preliminary general orders being regarded as equivalent to compliance or non-compliance with the corresponding standing orders (*c*): the petition for the proposed provisional order is taken as the petition for the substituted bill; the petitions deposited against, or in favour of, the draft order are transmitted from the Scottish Office, Whitehall, and are received by both Houses as petitions against, or in favour of, the substituted bill; and no petitions other than those so deposited can be received (*d*). The Chairmen determine, as in the case of ordinary private bills, in which House the substituted bill shall originate (*e*); and its subsequent course is identical with that of a private bill. Where the order, for the whole or a part of which a bill is substituted, is one of those applied for on or before the 27 March, it is competent for the promoters to deposit their substituted bill on or before the ensuing 27 November (*f*); but in most of such cases the substituted bill has been introduced and passed (either with or without a suspension of the standing orders), before the ordinary time of prorogation (*g*).

#### PROCEEDINGS BEFORE EXAMINER ON PROPOSED PROVISIONAL ORDER

Every draft order as originally applied for is referred by the Secretary of State to the Examiners, one or other of whom reports to him and to the Chairmen whether the "preliminary" general orders have or have not been complied with. In the case of a non-compliance the Examiner also reports to the two Chairmen the grounds for his decision (*h*); and, within a prescribed time, it is competent for the promoters to apply by memorial to the Chairmen praying them to dispense with any general order with which they have failed to comply. The Chairmen's decision (as to granting or refusing the dispensation prayed for) is final; and if, in granting a dispensation, they attach any conditions to it, the draft order cannot be proceeded with until the Examiner has reported that these conditions have been satisfied (*i*).

#### ISSUE OF PROVISIONAL ORDER

When the Chairmen have reported that a proposed provisional order may proceed, and there has been a due compliance with the general

(*a*) S.O. 234 (H. C.), 196 (H. L.).

(*b*) Sec. 2 (4).

(*c*) S.O. 233 (H. C.), 195 (H. L.).

(*d*) S.O. 235 (H. C.), 197 (H. L.). These S.Os. can of course be suspended by the usual procedure if the petitioners can prove a case before the Standing Orders Committee.

(*e*) C. J. (1903) 16; *ibid.* (1904) 31; &c.

(*f*) S.O. 232 (H. C.), 194 (H. L.). And *cf.* the proceedings on the Hutcheson's Hospital & Hutcheson's Educational Trust Bill (in substitution for a provisional order applied for on or before the 17 April, 1903), L. J. (1903) 157; *ibid.* (1904) 18, 21; Off. J. 1903-4, p. 24.

(*g*) *E.g.* Loch Leven Water Power Bill, 1901, C. J. (1901) 201, 206, 334, 420; Scottish Ontario &c. Company Bill, 1903, *ibid.* (1903) 208, 291, 376, 412; &c.

(*h*) G. O. 77.

(*i*) Sec. 3 (2); G. O. 78.

orders, the Secretary of State takes the application for the order into consideration (*k*).

#### PROCEEDINGS ON ORDERS ON WHICH AN INQUIRY IS HELD

In all cases where there is opposition (*l*)—and in any case in which, even though there be no opposition, he considers that inquiry is necessary—the Secretary of State directs an inquiry (as to the propriety of making and issuing the provisional order applied for) to be held by commissioners sitting in Scotland (*m*).

**Appointment of commissioners for inquiry.**—The commissioners appointed on these inquiries are drawn from three panels formed under the Act. Two of these are “parliamentary” panels, and consist of not more than fifteen members of the House of Lords and not more than twenty-five members of the House of Commons; these commissioners, in both Houses, are selected and proposed by the committees of selection (*n*). The third or “extra-parliamentary” panel is nominated every five years by the Chairmen and the Secretary of State, and consists of twenty “persons qualified by experience of affairs to act as commissioners”; and any casual vacancy occurring in this extra-parliamentary panel is filled up by the Chairmen acting jointly with the Secretary of State (*o*). When an inquiry is directed to be held on a proposed order or group of orders, the Chairmen of both Houses constitute a commission for the purpose by selecting four members from the two parliamentary panels, taking two members, when it is found feasible to do so, from the panel of each House, and nominating one of the four as chairman of the commissioners (*p*). If the Chairmen of both Houses are unable to appoint all the commissioners for an inquiry from the two parliamentary panels, recourse is then had to the third or extra-parliamentary panel, the Secretary of State taking from it sufficient members to make up the required number of commissioners (*q*). In the event of a casual vacancy in the chairmanship or among the members of a commission, the Secretary of State is empowered to fill it up from any of the three panels (*r*).

(*k*) Sec. 3 (1).

(*l*) No provisional order is considered as opposed unless the petitions against it (see p. 989) have been properly deposited, G. O. 82.

(*m*) Sec. 3 (1). In 1901 an inquiry was directed to be held on the Arizona Copper Company, Ltd., provisional order, although (no petition having been duly presented against it) it was not an opposed order, Off. J. 1900-1, pp. 3, 12, 38; H. C. 243, Q. 126 (1904). The inquiry on two opposed provisional orders in 1902 was deferred and was not directed to be held until 1904, Off. J. 1901-2, pp. 25, 89; 109 Parl. Deb. (1902) 109, c. 1179-85; P. L. R. ii, 48, and iv, 29, 61. The time and place of each inquiry are fixed by the chairman of the commissioners appointed to hold it, due notice being given to the parties concerned, s. 6 (1); G. O. 81; and cf. H.C. 243, Qs. 961, 2638-9 (1904).

(*n*) Sec. 5 (2); S.O. 228 (H. C.), 190, (H. L.).

(*o*) Sec. 4, and cf. Off. J. 1904-5, p. 29.

(*p*) Sec. 5 (1) (3). If need be, three or all of the commissioners may be members of the same parliamentary panel; see s. 5 (4).

(*q*) Sec. 5 (5), which suggests that circumstances might arise in which all the commissioners might be taken from the extra-parliamentary panel: such a course would in practice be unlikely and indeed, if possible, would be avoided.

(*r*) Sec. 5 (6), and cf. Off. J. 1913-14, p. 27. The occurrence of a dissolution of Parliament does not debar any member of the parliamentary panels from continuing to act in an inquiry on which he has already been appointed as a commissioner, s. 5 (7).

**Proceedings before commission on inquiry.**—The proceedings before a commission are analogous to those before a private bill committee in either House of Parliament. The commissioners are similarly restricted from inquiring into matters to be proved before the examiner (s), and are required to sign similar declarations before proceeding to business (t). The manner in which particular classes of undertakings or proposals are to be dealt with and reported upon is similarly conditioned and prescribed (u); and the rules as to the attendance, voting, and adjournment of the commissioners (a), as to proof of consents (b), and as to the “filled up” and the signed copy of the order, &c. (c), are the same *mutatis mutandis* as with a private bill committee. The evidence taken before parliamentary committees is occasionally referred by one or other House to a commission (d); and any recommendations made by the Chairmen of both Houses, or by any public department, with regard to a proposed order, are always referred to the commissioners and must be mentioned in their report (e). The commissioners must also report in every case whether they have inquired into the allegations of the provisional order referred to them, and whether they have or have not agreed to the preamble or gone through the clauses (f). In addition, the commissioners are empowered to enforce the attendance of witnesses and the production of papers (g). Any person who has petitioned in the prescribed manner is entitled to appear in opposition to an order (h); but the commissioners, whose decision on any question of *locus standi* is final, may not allow a *locus* to any person who is not thus entitled to be heard, except upon special grounds and subject, at the commissioners’ discretion, to the payment of costs or to other conditions (i).

**Report of commissioners.**—The commissioners must sit, as far as possible, from day to day till their inquiry is finished; they then report to the Secretary of State (k), recommending (i) that the order should be issued as prayed for, or (ii) that it should be issued with modifications (l), or (iii) that it should be refused (m). If they report that the order should not be made, the Secretary of State must refuse to issue it; otherwise he makes the order as prayed for, or with whatever modifications may

(s) G. O. 94.

(t) Sec. 5 (8); G. O. 86.

(u) G. O. 108–150.

(a) Sec. 10 (5) (6); G. O. 87–91, 93.

(b) G. O. 79, 96.

(c) G. O. 92, 105.

(d) L. J. (1902) 300; *ibid* (1903) 81; *ibid*. (1904) 120; C. J. (1901) 151; *ibid*. (1902) 373; *ibid*. (1904) 144.

(e) Sec. 6 (4); G. O. 103; *cf.* also sec. 11 (3) and 17.

(f) G. O. 101, 102.

(g) Sec. 10; G. O. 85.

(h) Sec. 6 (3); G. O. 83, 84.

(i) Sec. 6 (2); G. O. 102; Off. J. 1900–1, p. 45. The Act does not confer upon the commissioners the more extended power of awarding costs possessed by parliamentary committees (see p. 943). *Cf.* P. L. R. i, 60, 61; H. C. 243, Q. 333 (1904). See s. 6 (6) and S. R. & O. 1942 (No. 56) I, p. 742, for the Scale of Costs Order made thereunder.

(k) Sec. 6 (5).

(l) When they report that an order should be issued with modifications—the most common case—they must submit a copy of the order showing the modifications they recommend: s. 6 (5).

(m) Off. J. 1903–4, p. 42.

appear to be necessary having regard to the recommendation of the commissioners, of the two Chairmen, and of the Treasury and other public departments (*n*).

#### PROCEEDINGS ON ORDER ON WHICH NO INQUIRY IS HELD

If there is no opposition to a proposed order (or opposition has been formally withdrawn before an inquiry has been held) (*o*), and if the Secretary of State does not consider an inquiry necessary, he makes the order as prayed for, or "with such modifications as shall appear to be necessary having regard to" recommendations from the Chairmen and from public departments. But in dealing with a draft order on which no inquiry is held, he is to "have regard to" the instructions which the general orders give to a commission in the case of an inquiry; and the promoters, on due notice being given them, must appear before him or his representative to give whatever proofs, and to produce whatever evidence or documents, may be required in regard to their proposed order (*p*).

#### PROCEDURE ON PROVISIONAL ORDERS WHEN MODIFIED

Wherever any modifications are made in any draft order as originally applied for (*q*), the order is referred again, in its modified form, to the examiners in precisely the same manner as the original draft order (*r*). And before finally making and issuing an order as modified, the Secretary of State must cause copies of it to be deposited, for not less than fourteen days, in the office of the Clerk of the Parliaments and the Committee and Private Bill Office of the House of Commons, at the Treasury, and at all the offices where the draft order was originally deposited, and must again have regard to any recommendations that may be made by the Chairmen and the public departments (*s*).

#### PROCEDURE UPON BILLS TO CONFIRM ORDERS

The confirming bill, requisite to give validity to any provisional order under the Act, is introduced into Parliament as soon as practicable after the order is made and issued (*t*), notice being given as in the case of other provisional order bills. The Act creates a cardinal distinction, in respect of their passage through Parliament, between bills for the confirmation of those orders (whether opposed or unopposed) upon which an inquiry by commissioners has been held, and bills to confirm those unopposed orders upon which no inquiry has been held (*u*). The

(*n*) Sec. 8 (1).

(*o*) G. O. 155; Off. J. 1900-1, p. 76.

(*p*) Sec. 7; G. O. 80 and 151.

(*q*) Secs. 1, 7, 8 (1); G. O. 78.

(*r*) G. O. 78. The Examiners then report "No further General Orders applicable," or "Further General Orders complied with" or "not complied with," as the case may be. Cf. Off. J. 1904-5, pp. 37, 65, &c.

(*s*) Secs. 7, 8 (1); G. O. 107.

(*t*) Secs. 7, 8 (3); and cf. Off. J. 1904-5, p. 88. The Secretary of State determines in which House it shall originate, see H. C. 243, Q 154 (1904).

(*u*) Secs. 7, 8 (1), 9.

bills to confirm orders upon which no inquiry has been held (*a*) proceed under s. 7 of the Act. The bills to confirm orders upon which an inquiry has been held (*b*) proceed under s. 9.

PROCEDURE ON BILLS TO CONFIRM ORDERS ON WHICH NO INQUIRY HAS BEEN HELD (s. 7)

A bill introduced to confirm any order upon which no inquiry has been held is deemed to have passed all the stages up to and including committee (*c*). Consequently, in the House in which the bill originates the order for its consideration is made immediately upon its introduction, and after it has been considered and read the third time there it is sent to the second House in the ordinary way (*d*). In the second House a precisely similar course is followed. The order for the consideration stage is made immediately on the bill being brought from the first House, and the subsequent proceedings are the same as upon any ordinary public or provisional order bill (*e*).

PROCEDURE ON BILLS TO CONFIRM ORDERS ON WHICH INQUIRY HAS BEEN HELD (s. 9)

The procedure in the case of a bill to confirm any order upon which an inquiry has been held is prescribed by s. 9 of the Act (*f*). A bill of this description, on being first introduced, is read the first time in the House in which it originates, in the ordinary way; but immediately after the first introduction of every bill for confirming an order upon which there has been an inquiry, an opportunity is given for the presentation of a hostile petition which may lead to a further inquiry being held by a parliamentary committee. If no such petition is then presented, no opportunity is subsequently given during the passage of the bill through Parliament of referring it to a committee.

COMMITTAL OF BILL TO A JOINT COMMITTEE

The Procedure Act provides that if, before the expiration of seven days after the introduction of such a bill in the House in which it originates, a petition be presented against any order comprised in the bill (*g*), any Member may then give notice of a motion to refer the bill to a joint

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(*a*) Under this description is included any bill to confirm an order which has been referred to and reported from a commission, but with regard to which (owing to the non-appearance of opponents or to other causes) the commissioners have reported that they have not inquired into its allegations. In such a case the bill, being one to confirm an order upon which no inquiry has been held, proceeds under s. 7 of the Act. Glasgow Corporation (Tramways and General) Order Confirmation Bill, 1901, C. J. (1901) 343.

(*b*) Sec. 8 (1).

(*c*) Sec. 7 (2).

(*d*) C. J. (1903) 376, 380, 386, &c.

(*e*) C. J. (1901) 328, 334, 339, &c.

(*f*) By s. 16 (1) of the Act, the procedure prescribed in s. 9 is also made applicable, "with the necessary modifications," to bills for the confirmation of orders made by the Secretary of State under the Acts passed prior to 1899. These bills have proceeded under s. 9 of the Act except that they have been referred after first reading to the Examiners.

(*g*) In practice it has not been usual to include in a confirmation bill more than one order issued under the Act.



committee of both Houses (*h*). In those cases, therefore, where a hostile petition is thus presented, it rests with the House in which the confirming bill originates to determine whether a further inquiry by a parliamentary committee shall or shall not be granted. If a motion for a joint committee is made and carried in that House, "the bill shall stand referred to a joint committee of both Houses of Parliament, and the opponent shall, subject to the practice of Parliament, be allowed to appear and oppose by himself, his counsel, agent, and witnesses; and counsel, agent, and witnesses may be heard in support of the Order (*i*)."

**Constitution and procedure of joint committee.**—The joint committee so appointed is to consist of six members, three from each house, the House of Commons' members being nominated by the Committee of Selection (*k*). The committee hear and determine any question of *locus standi* (*l*); and they may by a majority award costs, the taxation and recovery of which are to be secured in the manner prescribed by the Parliamentary Costs Act, 1865 (see p. 942) (*m*).

#### SUBSEQUENT PROCEDURE ON BILL IN FIRST HOUSE

The report of the joint committee when made is laid before both Houses of Parliament (*n*). If the committee report that the order ought to be confirmed, the bill, if amended, is ordered for consideration—or, if not amended, for third reading—and is sent in due course to the second House.

#### PROCEDURE IN FIRST HOUSE ON BILLS WHEN NO JOINT COMMITTEE IS APPOINTED

If no hostile petition is presented—or if a petition be presented but a motion for a joint committee is either not made or not carried (*o*)—the confirming bill in the House in which it originates is deemed to have passed the stage of committee. The order for its consideration there is made immediately after its second reading (or after any unsuccessful motion for a joint committee), and after being considered and read the third time the bill is sent to the second House. (*p*)

#### PROCEDURE IN SECOND HOUSE UPON BILLS TO CONFIRM ORDER ON WHICH AN INQUIRY HAS BEEN HELD.

The procedure in the second House upon a bill to confirm any order upon which an inquiry has been held may be very shortly stated. After

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(*h*) The time at which such a motion may be made is immediately after the bill is read a second time in the House in which it originated, North British Railway Order Confirmation Bill, C. J. (1908) 467. In the House of Commons the motion for a joint committee if opposed is postponed, under standing order 174, either until some future day at a time when private business is usually taken or until half-past seven on such day, not being a Friday, as the Chairman of Ways and Means may fix. Cf. C. J. (1901) 225, 231 (Arizona, &c., Bill); *ibid.* (1904) 224, 240 (Leith, &c., Bill).

(*i*) Sec. 9 (1). Leith Corporation Tramways Order Confirmation Bill, C. J. (1904) 240, 246.

(*k*) S.O. 229 (H. C.), 191 (H. L.).

(*l*) Sec. 9 (1); P. L. R. iv, 15.

(*m*) Sec. 9 (3). Cf. Constable, pp. 94–5.

(*n*) Sec. 9 (2); C. J. (1904) 290, L. J. (1904) 239.

(*o*) C. J. (1901) 231; L. J. (1901) 249.

(*p*) Sec. 9 (4); C. J. (1901) 222, 225, 231, &c.

being brought from the House in which it originates, it is read the first time and second time (*g*). Between these two stages no such length of time need intervene as is necessary in the first House, as it is not competent for parties to present a petition against an order when the confirming bill reaches the second House, nor, consequently, for a Member to move that it should be referred to a joint committee (*r*). In the second House the stage of committee is deemed to have been passed in the case of every bill confirming any order on which an inquiry has been held (*s*).

If in the first House no motion for a joint committee has been carried, the bill in the second House, after being read a second time, is ordered in the Commons to be considered as if reported by a committee, and proceeds to its third reading in the ordinary manner (*t*). In the House of Lords, when the bill has been read a second time, a day is appointed for its third reading.

If, on a motion made and carried in the first House, the bill has been referred to a joint committee, it is deemed, when in the second House, to have passed the stage of committee; and is ordered to be read the third time (*u*).

It may be noted that where a bill, for the confirmation of an order upon which there has been an inquiry, originates in the Lords and is there referred to a joint committee, no opportunity is provided for amending it (except verbally) during its subsequent passage through the Commons where Public Business Standing Order No. 42 forbids any amendments not being merely verbal on the third reading.

(*g*) The Edinburgh and District Water Order Confirmation Bill was brought from the Lords on the 7 August 1914, and passed through all its stages in the House of Commons on the same day, C. J. (1914) 430, H. C. Deb. (1914) 65, c. 2146.

(*r*) Sec. 9 (1); Parl. Deb. (1901) 94, c. 536; H. L. Deb. (1916) 21, c. 512.

(*s*) Sec. 9; and Note by Mr. Speaker, 10 August 1904.

(*t*) Sec. 9; and cf. C. J. (1902) 340, 341, 363, 369, 378 (Aberdeen, &c., Bill); &c. The stages of consideration and third reading have been taken on the same day, Sidlaw Sanatorium (Transfer) Order Confirmation Bill, *ibid.* (1910) 275; Dunfermline District Water Order Confirmation Bill, *ibid.* (1918) 253; Grangemouth and Stirling Water Order Confirmation Bill [Lords], *ibid.* (1921) 355; Robert Gordon's Colleges and Aberdeen Endowments Trust Order Confirmation Bill [Lords], *ibid.* (1923) 324.

(*u*) S.O. 230 (H. C.), 192 (H. L.).



# APPENDIX

## HOUSE OF COMMONS STANDING ORDERS RELATIVE TO PUBLIC BUSINESS (1945)

### SITTINGS OF THE HOUSE

1.—(1) Unless the House otherwise order, the House shall meet every Monday, Tuesday, Wednesday, and Thursday at a quarter to three of the clock. Sittings of the House.

(2) At half-past eleven of the clock Mr. Speaker shall adjourn the House without question put, unless proceedings exempted as hereinafter provided from the operation of this standing order be then under consideration.

(3) At eleven of the clock on Mondays, Tuesdays, Wednesdays, and Thursdays, except as aforesaid, the proceedings on any business then under consideration shall be interrupted; and, if the House be in committee, the chairman shall leave the chair, and make his report to the House; and if a motion has been proposed for the adjournment of the House, or of the debate, or in committee that the chairman do report progress, or do leave the chair, every such dilatory motion shall lapse without question put.

(4) Provided always, that on the interruption of business the closure may be moved; and if moved, or if proceedings under the closure rule be then in progress, Mr. Speaker or the chairman shall not leave the chair until the questions consequent thereon and on any further motion, as provided in the rule "closure of debate," have been decided.

(5) After the business under consideration at eleven has been disposed of, no opposed business except proceedings exempted as hereinafter provided from the operation of this standing order shall be taken.

(6) The proceedings on a bill originating in Committee of Ways and Means, proceedings made in pursuance of any Act of Parliament (including proceedings on the Army and Air Force (Annual) Bill), or proceedings in pursuance of any standing order, the proceedings on the reports of the Committee of Ways and Means and of committees authorizing the expenditure of public money, except the Committee of Supply, may be entered upon after eleven of the clock though opposed, shall not be interrupted under the provisions of this standing order, and if under discussion when the business is postponed under the provisions of any standing order may be resumed and proceeded with, though opposed, after the interruption of business.

(7) All business appointed for any sitting, and not disposed of before the termination of the sitting, shall stand over until the next sitting, or until such other sitting on any day on which the House ordinarily sits as the Member in charge of the business may appoint.

(8) A motion may be made by a minister of the Crown at the commencement of public business, to be decided without amendment or debate to the following effect: "That the proceedings on any specified

business be exempted at this day's sitting from the provisions of the standing order 'Sittings of the House,' and, if such a motion be agreed to, the business so specified shall not be interrupted if it is under discussion at eleven of the clock that night, may be entered upon at any hour although opposed, and, if under discussion when the business is postponed under the provisions of any standing order, may be resumed and proceeded with, though opposed, after the interruption of business.

(9) Provided always, that after any business exempted from the operation of this order is disposed of, the remaining business of the sitting shall be dealt with according to the provisions applicable to business taken after eleven of the clock.

Friday  
sittings.

2.—The House shall meet every Friday, at eleven of the clock, for private business, petitions, orders of the day, and notices of motions. Standing order No. 1 (3) (4) and (7) shall apply to the sittings on Fridays with the substitution of four of the clock for eleven of the clock; and the House shall continue to sit until half-past four of the clock, unless previously adjourned. After the business under consideration at four has been disposed of, no opposed business shall be taken. At the conclusion of business, or at half-past four of the clock precisely, notwithstanding there may be business under discussion, Mr. Speaker shall adjourn the House without putting any question.

### ARRANGEMENT OF PUBLIC BUSINESS

3.—(1) Unless the House otherwise direct—

- (a) Until Easter, Government business shall have precedence at every sitting except the sitting on Wednesday and the sitting on Friday; and at the sitting on Wednesday notices of motions and public bills, other than Government bills, shall have precedence of Government business, and notices of motions shall have precedence of the orders of the day;
- (b) After Easter, Government business shall have precedence at all sittings, except the sittings on the first, second, third and fourth Fridays after Easter Day and the sittings on the third, fourth, fifth and sixth Fridays after Whit Sunday;
- (c) At the sittings on Wednesday, when Government business has not precedence Mr. Speaker shall at half-past seven of the clock, if the first motion (other than a motion for the adjournment of the House made after the commencement of public business) has not been disposed of, proceed to interrupt the proceedings thereon and such business shall be disposed of as if it were business interrupted at eleven of the clock under Standing Order No. 1;
- (d) At the sittings on Monday, Tuesday, Wednesday and Thursday the House will first proceed with unopposed private business, petitions, motions for unopposed returns, and leave of absence to Members, and ballots for notices of motions.

(2) In the case of a session beginning between Easter and Christmas the following modifications of paragraph (1) of this Standing Order shall have effect :—

- (a) Government business shall have precedence on as many Wednesdays immediately before Good Friday as the number of Wednesdays before Christmas on which it has not had precedence, and on as many Fridays immediately before Good Friday as the number of Fridays (reduced by three) on which it had not precedence before Christmas;
- (b) After Easter, Government business shall have precedence at all sittings except the sittings on the second, third, fourth, and fifth Fridays after Easter Day;

Precedence  
of business  
at different  
sittings

- (c) Standing Order No. 4 shall come into force and have effect after Easter, instead of after Whitsuntide.

4.—After Whitsuntide, public bills, other than Government bills, shall be arranged on the order book so as to give priority to the bills most advanced, and Lords' amendments to public bills appointed to be considered shall be placed first, to be followed by third readings, considerations of report not already entered upon, bills in progress in committee, bills appointed for committee, and second readings.

Precedence of bills after Whitsuntide.

5.—No notice of motion for a date on which notices are entitled to precedence shall be given for any date beyond the second day on which such notices are entitled to precedence.

Period for which notices of motion may be given.

### PRIVATE BUSINESS

6.—(1) No opposed private business shall be set down for the sittings on Friday.

Time for taking private business

(2) No private business shall be considered after three of the clock upon Monday, Tuesday, Wednesday, and Thursday, and any business not reached shall stand over to the next sitting.

(3) Any private business entered upon and not disposed of by the time referred to in paragraph (2) of this order shall be deferred until such time as the Chairman of Ways and Means may determine.

(4) Private business, if so directed by the Chairman of Ways and Means, shall be taken at half-past seven of the clock on Monday, Tuesday, Wednesday, or Thursday, or as soon thereafter as any motion for the adjournment of the House standing over has been disposed of, provided that such business shall be distributed as near as may be proportionately between the sittings on which Government business has precedence and the other sittings and, where any opposed private business is so directed by the Chairman of Ways and Means to be taken, the direction shall be taken to include the setting down of any motion contingent, directly or otherwise, thereon.

(5) No opposed private business other than that under consideration shall be taken after half-past nine of the clock.

### QUESTIONS

7.—(1) Notices of questions shall be given by Members in writing to the clerk at the table without reading them *viva voce* in the House, unless the consent of Mr. Speaker to any particular question has been previously obtained.

Questions to members

(2) Questions shall be taken on Monday, Tuesday, Wednesday, and Thursday, after private business has been disposed of, and not later than three of the clock.

(3) No questions shall be taken after a quarter before four of the clock, except questions which have not been answered in consequence of the absence of the minister to whom they are addressed, and questions which have not appeared on the paper, but which are of an urgent character, and relate either to matters of public importance or to the arrangement of business.

(4) Any Member who desires an oral answer to his question may distinguish it by an asterisk, but notice of any such question must appear at latest on the notice paper circulated on the day before that on which an answer is desired.

(5) If any Member does not distinguish his question by an asterisk, or if he or any other Member deputed by him is not present to ask it, or if it is not reached by a quarter before four of the clock, the minister to whom it is addressed shall cause an answer to be printed in the Official Report of the Parliamentary Debates, unless the Member has before questions are disposed of signified his desire to postpone the question.

## ADJOURNMENT ON MATTER OF PUBLIC IMPORTANCE

Motion for adjournment on matter of urgent public importance

8.—No motion for the adjournment of the House shall be made until all the questions asked at the commencement of business on Monday, Tuesday, Wednesday, or Thursday have been disposed of, and no such motion shall be made before the orders of the day or notices of motion have been entered upon, except by leave of the House, unless a Member rising in his place shall propose to move the adjournment for the purpose of discussing a definite matter of urgent public importance, and not less than forty Members shall thereupon rise in their places to support the motion, or unless, if fewer than forty Members and not less than ten shall thereupon rise in their places, the House shall, on a division, upon question put forthwith, determine whether such motion shall be made. If the motion is so supported, or the House so determines that it shall be made, it shall stand over until half-past seven on the same day.

## ANTICIPATION

Anticipation

9.—In determining whether a discussion is out of order on the ground of *anticipation*, regard shall be had by Mr. Speaker to the probability of the matter anticipated being brought before the House within a reasonable time.

## BRINGING IN BILLS AND NOMINATING SELECT COMMITTEES AT COMMENCEMENT OF PUBLIC BUSINESS

Motions for leave to bring in bills and nomination of select committees at commencement of public business

10.—On Tuesdays and Wednesdays, and, if set down by the Government, on Mondays and Thursdays, motions for leave to bring in bills, and for the nomination of select committees, may be set down for consideration at the commencement of public business. If such motions be opposed, Mr. Speaker, after permitting, if he thinks fit, a brief explanatory statement from the Member who moves and from the Member who opposes any such motion respectively, may, without further debate, put the question thereon, or the question, that the debate be now adjourned.

## ORDERS OF THE DAY

Orders of the day to be read without question put.

11.—At the time fixed for the commencement of public business, on days on which orders have precedence of notices of motions, and after the notices of motions have been disposed of, on all other days, Mr. Speaker shall direct the clerk at the table to read the orders of the day, without any question being put.

Order of disposing of orders of the day

12.—The orders of the day shall be disposed of in the order in which they stand upon the paper; the right being reserved to His Majesty's ministers of arranging Government business, whether orders of the day or notices of motions in such order as they may think fit, subject to precedence of private Members' business on those days on which such business has precedence.

## SUPPLY AND WAYS AND MEANS

Appointment of committees.

13.—The Committees of Supply and Ways and Means shall be appointed by the House at the commencement of every session, so soon as an address has been agreed to, in answer to His Majesty's speech.

Business of supply.

14.—(1) Twenty days and no more (unless as hereinafter provided) being days before the 5th of August, shall be allotted for the consideration of the annual Navy, Army, Air, and Civil Estimates, including votes on account. The days allotted shall not include any day on which the question has to be put that Mr. Speaker do leave the chair, or any day on which the business of supply does not stand as first order.

(2) Provided that the days occupied by the consideration of estimates supplementary to those of a previous session or of any vote of credit, or of votes for supplementary or additional estimates presented by the Government for war expenditure, or for any new service not included in the ordinary estimates for the year, shall not be included in the computation of the twenty days aforesaid.

(3) Provided also that on motion made after notice, to be decided without amendment or debate, additional time, not exceeding three days, may be allotted for the purposes aforesaid, either before or after the 5th of August.

(4) On a day so allotted, no business other than the business of supply and the consideration of the reports of the Committee of Public Accounts and the Select Committee on Estimates shall be taken before eleven, and no business in Committee or proceedings on report of supply shall be taken after eleven, whether a general order exempting business from interruption under the Standing Order (Sittings of the House) is in force or not, unless the House otherwise order, on the motion of a minister of the Crown, moved at the commencement of public business, to be decided without amendment or debate.

(5) On the days so allotted, not more than one day in committee shall be allotted to any vote on account, and not more than one day to the report of that vote. At eleven on the close of the day on which the committee on that vote is taken, and of the day on which the report of that vote is taken, the chairman or Mr. Speaker, as the case may be, shall forthwith put every question necessary to dispose of the vote or the report.

(6) At ten of the clock on the last day but one of the days so allotted the chairman shall forthwith put every question necessary to dispose of the vote then under consideration, and shall then forthwith put the question with respect to each class of the Civil Estimates that the total amount of the votes outstanding in that class be granted for the services defined in the class, and shall in like manner put severally the questions that the total amounts of the votes outstanding in the Navy, the Army, the Air, and the Revenue departments estimates be granted for the services defined in those estimates.

(7) At ten of the clock on the last, not being earlier than the twentieth, of the allotted days, Mr. Speaker shall forthwith put every question necessary to dispose of the report of the resolution then under consideration, and shall then forthwith put, with respect to each class of the Civil Estimates, the question, that the House doth agree with the committee in all the outstanding resolutions reported in respect of that class, and shall then put a like question with respect to all the resolutions outstanding in the Navy, the Army, the Air, the Revenue departments estimates, and other outstanding resolutions severally.

(8) On the days appointed for concluding the business of supply, the consideration of that business shall not be anticipated by a motion of adjournment, and no dilatory motion shall be moved on proceedings for that business and the business shall not be interrupted under any Standing Order.

(9) Any additional estimate for any new matter not included in the original estimates for the year shall be submitted for consideration in the Committee of Supply on some day not later than two days before the committee is closed.

(10) For the purposes of this order two Fridays shall be deemed equivalent to a single sitting on any other day.

15.—The Committees of Supply and Ways and Means may be fixed for any day on which the House shall meet for despatch of business.

Days for committees of supply and ways and means.

#### ORDERS OF THE DAY FOR COMMITTEE

16.—Whenever an order of the day is read for the House to resolve itself into committee Mr. Speaker shall leave the chair without putting any question, and the House shall thereupon resolve itself into such committee, unless notice of an instruction to such committee has been given (when such instruction shall be first disposed of), or unless on first

When chair to be left without question put.



going into Committee of Supply on the Navy, Army, Air or Civil Estimates respectively, or on any vote of credit, an amendment be moved or question raised relating to the estimates proposed to be taken in supply.

### ORDER IN THE HOUSE

Order in  
debate.

17.—(1) Whenever any Member shall have been named by Mr. Speaker, or by the chairman immediately after the commission of the offence of disregarding the authority of the chair, or of abusing the rules of the House by persistently and wilfully obstructing the business of the House, or otherwise, then, if the offence has been committed by such Member in the House, Mr. Speaker shall forthwith put the question, on a motion being made, no amendment, adjournment, or debate being allowed, "That such Member be suspended from the service of the House"; and, if the offence has been committed in a committee of the whole House, the chairman shall forthwith suspend the proceedings of the committee and report the circumstance to the House; and Mr. Speaker shall, on a motion being made thereupon, put the same question, without amendment, adjournment, or debate, as if the offence had been committed in the House itself.

(2) If any Member be suspended under this order, his suspension on the first occasion shall continue until the fifth day, and on the second occasion until the twentieth day, on which the House shall sit after the day on which he was suspended, but on any subsequent occasion until the House shall resolve that the suspension of such Member do terminate.

(3) Provided always, that suspension from the service of the House shall not exempt the Member so suspended from serving on any committee for the consideration of a private bill to which he may have been appointed before his suspension.

(4) Provided also, that not more than one Member shall be named at the same time, unless several Members, present together, have jointly disregarded the authority of the chair.

(5) Provided also, that if any Member, or Members acting jointly, who have been suspended under this order from the service of the House, shall refuse to obey the direction of Mr. Speaker, when severally summoned under Mr. Speaker's orders by the Serjeant at Arms to obey such direction, Mr. Speaker shall call the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his direction, and the Member or Members named by him as having refused to obey his direction shall thereupon and without further question put, be suspended from the service of the House during the remainder of the session.

(6) Provided always, that nothing in this resolution shall be taken to deprive the House of the power of proceeding against any Member according to ancient usages.

Irrelevance  
or  
repetition.

18.—Mr. Speaker or the chairman, after having called the attention of the House, or of the committee, to the conduct of the Member, who persists in irrelevance, or tedious repetition either of his own arguments, or of the arguments used by other Members in debate, may direct him to discontinue his speech.

Disorderly  
conduct

19.—(1) Mr. Speaker or the chairman shall order Members whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of that day's sitting; and the Serjeant at Arms shall act on such orders as he may receive from the chair in pursuance of this resolution. But if, on any occasion, Mr. Speaker or the chairman deems that his powers under this Standing Order are inadequate, he may name such Member or Members in pursuance of the Standing Order "Order in Debate," or he may call upon the House to adjudge upon the conduct of such Member or Members.

(2) Provided always, that Members who are ordered to withdraw under this Standing Order, or who are suspended from the service of the House under the Standing Order "Order in Debate," shall forthwith withdraw from the precincts of the House, subject, however, in the case of such suspended Members, to the proviso in that Standing Order regarding their service on private bill committees.

20.—In the case of grave disorder arising in the House Mr. Speaker may, if he thinks it necessary to do so, adjourn the House without question put, or suspend any sitting for a time to be named by him.

Power of Mr. Speaker to adjourn House or suspend sitting.

### ADJOURNMENT AND COUNTING OUT

21.—When a motion is made for the adjournment of a debate, or of the House during any debate, or that the chairman do report progress, or do leave the chair, the debate thereupon shall be confined to the matter of such motion; and no Member, having moved or seconded any such motion, shall be entitled to move, or second, any similar motion during the same debate.

Debate on motion for adjournment

22.—If Mr. Speaker, or the chairman, shall be of opinion that a motion for the adjournment of a debate, or of the House, during any debate, or that the chairman do report progress, or do leave the chair, is an abuse of the rules of the House, he may forthwith put the question thereupon from the chair, or he may decline to propose the question thereupon to the House.

Dilatory motion in abuse of rules of House.

23.—The House, when it meets on Friday, shall, at its rising, stand adjourned until the following Monday without any question being put, unless the House shall otherwise resolve.

Adjournment from Friday to Monday.

24.—On Fridays the House shall stand adjourned if at any time after one of the clock on the House being counted it shall appear that forty Members are not present.

Counting out (Fridays).

25.—The House shall not be counted between a quarter-past eight and a quarter-past nine of the clock, but if on a division taken on any business between a quarter-past eight and a quarter-past nine of the clock it appears that forty Members are not present, the business shall stand over until the next sitting of the House, and the next business shall be taken.

Counting out

### CLOSURE OF DEBATE

26.—(1) After a question has been proposed a Member rising in his place may claim to move, "That the question be now put," and, unless it shall appear to the chair that such motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the question, "That the question be now put," shall be put forthwith, and decided without amendment or debate.

Closure of debate.

(2) When the motion "That the question be now put" has been carried, and the question consequent thereon has been decided, any further motion may be made (the assent of the chair, as aforesaid, not having been withheld) which may be requisite to bring to a decision any question already proposed from the chair.

(3) When a clause is under consideration, a motion may be made (the assent of the chair as aforesaid, not having been withheld), that the question, that certain words of the clause defined in the motion stand part of the clause, or that the clause stand part of, or be added to, the bill, be now put.

(4) Such motions shall be put forthwith, and decided without amendment or debate.

(5) Provided always that this rule shall be put in force only when Mr. Speaker or, in committee, the Chairman of Ways and Means or Deputy Chairman is in the chair.

Majority for  
closure.

27.—Questions for the closure of debate under Standing Order "Closure of Debate," shall be decided in the affirmative, if, when a division be taken, it appears by the numbers declared from the chair, that not less than one hundred Members voted in the majority in support of the motion.

### SELECTION OF AMENDMENTS

Selection of  
amend-  
ments.

28.—In respect of any motion, or in respect of any bill under consideration either in committee of the whole House or on report, Mr. Speaker, or in committee the Chairman of Ways and Means, and the Deputy Chairman, shall have power to select the new clauses or amendments to be proposed, and may, if he thinks fit, call upon any Member who has given notice of an amendment to give such explanation of the object of the amendment as may enable him to form a judgment upon it.

### DIVISIONS

Procedure  
on  
divisions

29.—(1) If the opinion of Mr. Speaker or the chairman as to the decision of a question is challenged he shall direct that the lobby be cleared.

(2) After the lapse of two minutes from this direction he shall put the question again, and, if his opinion is again challenged, he shall announce the names of tellers.

(3) After the lapse of six minutes from this direction he shall direct that the doors giving access to the division lobbies be locked.

Voting of  
members

30.—(1) A Member may vote in a division although he did not hear the question put.

(2) A Member is not obliged to vote.

Division  
unneces-  
sarily  
claimed

31.—Mr. Speaker or the chairman may, after the lapse of two minutes, if in his opinion the division is unnecessarily claimed, take the vote of the House, or committee, by calling upon the Members who support, and who challenge his decision, successively to rise in their places; and he shall thereupon, as he thinks fit, either declare the determination of the House or committee, or name tellers for a division.

### PUBLIC BILLS

Presenta-  
tion or  
introduc-  
tion and  
firstreading

32.—(1) When any bill shall be presented by a Member, in pursuance of an order of this House, or shall be brought from the Lords, the questions "That this bill be now read a first time," and "That this bill be printed," shall be decided without amendment or debate.

(2) A Member may, if he thinks fit, after notice, present a bill without an order of the House for its introduction; and when a bill is so presented, the title of the bill shall be read by the clerk at the table, and the bill shall then be deemed to have been read a first time, and shall be printed.

Hybrid  
Bills

32A. Where a public bill (not being a bill to confirm a Provisional Order or Certificate) is ordered to be read a second time on a day appointed, and it appears that the Standing Orders relative to private business may be applicable to the bill, the Examiners of Petitions for Private Bills shall examine the bill with respect to the applicability thereto of the Standing Orders, and shall proceed and report forthwith, and the order of the day relating to the bill shall not be affected thereby; but if the Examiner reports that any Standing Order applicable to the bill has not been complied with, and the Standing Orders Committee report that such Standing Order ought not to be dispensed with, the order of the day relating to the bill shall be discharged.

Second and  
third  
readings

33.—If on an amendment to the question that a bill be now read a second time or the third time it is decided that the word "now" or any words proposed to be left out stand part of the question, Mr. Speaker shall forthwith declare the bill to be read a second or the third time as the case may be.

34.—It shall be an instruction to all committees to which bills may be committed, that they have power to make such amendments therein as they shall think fit, provided they be relevant to the subject-matter of the bill; but that if any such amendments shall not be within the title of the bill, they do amend the title accordingly, and do report the same specially to the House.

Amend-  
ments in  
committee.

35.—In committee on a bill, the preamble shall stand postponed without question put until after the consideration of the clauses and schedules, if any.

Postpone-  
ment of  
preamble

36.—In going through a bill no questions shall be put for the filling up words already printed in *italics*, and commonly called blanks, unless exception be taken thereto; and if no alterations have been made in the words so printed in *italics*, the bill shall be reported without amendment, unless other amendments have been made thereto.

Questions  
not to be  
put on  
blanks.

37.—On a clause being offered in the committee on the bill, or on the consideration of report of a bill, Mr. Speaker or the chairman shall desire the Member to bring up the same, whereupon it shall be read a first time without question put, but no clause shall be offered on consideration of report without notice.

Procedure  
on offer of  
new clause.

38.—At the close of the proceedings of a committee of the whole House on a bill, the chairman shall report the bill forthwith to the House, and when amendments shall have been made thereto, the same shall be received, without debate, and a time appointed for taking the same into consideration.

Report of  
bill.

39.—When the order of the day for the consideration of a bill, as amended in the committee of the whole House, has been read, the House shall proceed to consider the same without question put, unless the Member in charge thereof shall desire to postpone its consideration, or a motion shall be made to re-commit the bill.

Considera-  
tion of bill  
as amended.

40.—If a motion to re-commit a bill be opposed, Mr. Speaker shall permit a brief explanatory statement of the reasons for such re-commitment from the Member who moves and from a Member who opposes any such motion respectively, and shall without further debate put the question thereon.

Re-committal  
of a bill.

41.—Upon the report stage of any bill no amendment which could not have been proposed in committee without an instruction from the House may be proposed.

Amend-  
ments on  
report.

42.—No amendments, not being merely verbal, shall be made to any bill on the third reading.

Amend-  
ments on  
third  
reading.

43.—Lords' amendments to public bills shall be appointed to be considered on a future day, unless the House shall order them to be considered forthwith.

Lords'  
amend-  
ments

44.—With respect to any bill brought to this House from the House of Lords, or returned by the House of Lords to this House, with amendments, whereby any pecuniary penalty, forfeiture, or fee shall be authorized, imposed, appropriated, regulated, varied, or extinguished, this House will not insist on its ancient and undoubted privileges in the following cases:—

Pecuniary  
penalties.

- (1) When the object of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences.
- (2) Where such fees are imposed in respect of benefit taken or service rendered under the Act, and in order to the execution of the Act, and are not made payable into the Treasury or Exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.
- (3) When such bill shall be a private bill for a local or personal Act.

Temporary  
laws.

45.—The precise duration of every temporary law shall be expressed in a distinct clause at the end of the bill.

### STANDING COMMITTEES

Committee  
of Bills.

46.—(1) When a bill has been read a second time it shall stand committed to one of the standing committees, unless the House, on motion to be decided without amendment or debate, otherwise order; and such a motion shall not require notice, must be made immediately after the bill is read a second time, may be made by any Member, and may, though opposed, be decided after the expiration of the time for opposed business. But this order shall not apply to—

(a) Bills for imposing taxes or Consolidated Fund or Appropriation Bills; or

(b) Bills for confirming Provisional Orders.

(2) Provided that the House may, on motion made by the Member in charge of a bill, commit the bill to a standing committee in respect of some of its provisions, and to a committee of the whole House in respect of other provisions, and that if such a motion is opposed Mr. Speaker, after permitting, if he thinks fit, a brief explanatory statement from the Member who makes and from the Member who opposes the motion, shall without further debate put the question thereon.

(3) Where a bill has been committed to a standing committee, or has been so committed in respect of any provision, then, at the report stage of the bill or provision, the rule against speaking more than once shall not apply to the Member in charge of the bill or to the mover of any amendment or new clause in respect of that amendment or clause.

Constitu-  
tion of  
standing  
committees.

47.—(1) Not more than five standing committees shall be appointed for the consideration of bills or other business referred to a standing committee, and the procedure in those committees shall be the same as in a select committee unless the House otherwise order. On a division being called in the House, the chairman of a standing committee shall suspend the proceedings in the committee for such time as will, in his opinion, enable Members to vote in the division. Any notice of amendment to a bill which has been committed to a standing committee shall stand referred to the standing committee. The quorum of a standing committee shall be twenty. Strangers shall be admitted to a standing committee except when the committee shall order them to withdraw.

(2) One of the standing committees shall be appointed for the consideration of all public bills relating exclusively to Scotland and committed to a standing committee, and shall consist of all the Members representing Scottish constituencies, together with not less than ten nor more than fifteen other Members to be nominated in respect of any bill by the committee of selection, who shall have regard in such nomination to the approximation of the balance of parties in the committee to that in the whole House, and shall have power from time to time to discharge, for non-attendance or at their own request, the Members so nominated by them, and to appoint others in substitution for those discharged.

(3) Subject as aforesaid the bills committed to a standing committee shall be distributed among the committees by Mr. Speaker.

(4) In all but one of the standing committees Government bills shall have precedence.

(5) Standing Order No. 18 (as to irrelevance and repetition) and Standing Orders Nos. 26 (1), (2), (3) and (4) and 27 (as to closure) shall apply to standing committees, with the substitution in Standing Order No. 26 of the chairman of the committee for the chair, and, in Standing

Order No. 27 of 20 for 100 as the number necessary to render the majority effective for the closure, and the chairman of a standing committee shall have the like powers as the chairman has under Standing Order No. 22 (as to dilatory motions), and under Standing Order No. 28 (as to selection of amendments).

(6) All standing committees shall have leave to print and circulate with the votes the minutes of their proceedings and any amended clauses of bills committed to them.

48.—Each of the said standing committees shall consist of not less than thirty nor more than fifty Members, to be nominated by the committee of selection, who shall have regard to the composition of the House; and shall have power to discharge Members from time to time, for non-attendance or at their own request, and to appoint others in substitution for those discharged. Provided that, for the consideration of all public bills relating exclusively to Wales and Monmouthshire, the committee shall be so constituted as to comprise all Members sitting for constituencies in Wales and Monmouthshire. The committee of selection shall also have power to add not less than ten nor more than thirty-five Members to a standing committee in respect of any bill referred to it, to serve on the committee during the consideration of such bill, and in adding such Members shall have regard to their qualifications. Provided that this order shall not apply to the standing committee on Scottish bills.

50.—All bills which shall have been committed to one of the said standing committees shall, when reported to the House, be proceeded with as if they had been reported from a committee of the whole House: Provided only, that all bills reported from a standing committee, whether amended or not, shall be considered on report by the House without question put, unless the Member in charge thereof desires to postpone its consideration, or a motion be made to re-commit the bill.

### COMMITTEES OF THE WHOLE HOUSE

51.—When the chairman has been ordered to make a report to the House, he shall leave the chair without question put. Every such report shall be brought up without question put.

### SITTINGS OF COMMITTEES

52.—All committees shall have leave to sit, during the sitting of the House and notwithstanding any adjournment of the House on any day on which the House has sat.

### SELECT COMMITTEES

53.—No select committee shall, without leave of the House, consist of more than fifteen Members; such leave shall not be moved for without notice; and in the case of Members proposed to be added or substituted, after the first appointment of the committee, the notice shall include the names of the Members proposed to be added or substituted.

54.—Every Member intending to move for the appointment of a select committee shall endeavour to ascertain previously whether each Member proposed to be named by him on such committee will give his attendance thereupon.

55.—Every Member intending to move for the appointment of a select committee shall, one day next before the nomination of such committee, place on the notices the names of the Members intended to be proposed by him to be members of such committee.

Lists of  
serving  
Members

56.—Lists shall be affixed in some conspicuous place in the committee office and in the lobby of the House of all Members serving on each select committee.

Withdrawal  
of  
documents.

56A.—No document received by the clerk of any select committee shall be withdrawn or altered without the knowledge and approval of the committee.

Entry of  
questions  
asked.

57.—To every question asked of a witness under examination in the proceedings of any select committee there shall be prefixed in the minutes of the evidence the name of the Member asking such question.

Entry on the  
minutes of  
proceedings  
of a  
committee

58.—The names of the Members present each day at the sitting of any select committee, and in the event of any division taking place, the question proposed, the name of the proposer and the respective votes thereupon of the Members present, shall be entered on the minutes of the proceedings of the committee, and such minutes of proceedings shall be reported to the House.

Entry on the  
minutes of  
evidence

59.—The names of Members present each day at the sitting of any select committee shall be entered on the minutes of evidence, if any.

Quorum

60.—If, at any time during the sitting of a select committee of this House the quorum of Members fixed by the House shall not be present the clerk of the committee shall call the attention of the chairman to the fact, who shall thereupon suspend the proceedings of the committee until a quorum be present, or adjourn the committee to some future day.

Power to re-  
port opinion  
and obser-  
vations

61.—Every select committee having power to send for persons, papers, and records, shall have leave to report their opinion and observations, together with the minutes of evidence taken before them, to the House, and also to make a special report of any matters which they may think fit to bring to the notice of the House.

Notice of  
prayers.

62.—The Serjeant at Arms attending this House shall, from time to time, when the House is going to prayers, give notice thereof to all committees.

## PUBLIC MONEY

Recommendation  
from crown when  
required on  
application  
relating to  
public  
money

63.—This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the Consolidated Fund or out of money to be provided by Parliament, unless recommended from the Crown.

Certain  
proceedings  
relating to  
public  
money to be  
initiated in  
committee.

64.—This House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole House.

Procedure  
upon Bills  
whose main  
object is to  
create a  
charge upon  
the public  
revenue.

64A.—A bill (other than a bill which is required to originate in Committee of Ways and Means) the main object of which is the creation of a public charge may either be presented, or brought in upon an order of the House, by a minister of the Crown, and, in the case of a Bill so presented or brought in, the creation of the charge shall not require to be authorized by a committee of the whole House until the bill has been read a second time, and after the charge has been so authorized the bill shall be proceeded with in the same manner as a bill which involves a charge that is subsidiary to its main purpose.

Restriction  
on receipt  
of petitions  
relating to  
public  
money.

65.—This House will not receive any petition for compounding any sum of money owing to the Crown, upon any branch of the revenue, without a certificate from the proper officer or officers annexed to the said petition, stating the debt, what prosecutions have been made for the recovery of such debt, and setting forth how much the petitioner and his security are able to satisfy thereof.

66.—This House will not proceed upon any motion for an address to the Crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole House.

Procedure on address to crown for issue of public money

67.—This House will not receive any petition, or proceed upon any motion for a charge upon the revenues of India, but what is recommended by the Crown.

Procedure on application or charge on revenues of India  
Procedure on motion for charge on public revenue

68.—If any motion be made in the House for any aid, grant, or charge upon the public revenue, whether payable out of the Consolidated Fund or out of money to be provided by Parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the House shall think fit to appoint, and then it shall be referred to a committee of the whole House before any resolution or vote of the House do pass therein.

69.—When notice has been given of a resolution authorizing expenditure in connection with a bill, the House may, if the recommendation of the Crown is signified thereto, at any time after such notice appears on the paper, resolve itself into committee to consider the resolution.

Money committee's

70.—A resolution authorizing the issue of money out of the Consolidated Fund reported from the Committee of Ways and Means may be considered forthwith by the House, and the consideration on report and third reading of a bill ordered to be brought in upon such a resolution or resolutions may be taken forthwith as soon as the bill has been reported from committee of the whole House.

Consolidated Fund issues

### PACKET AND TELEGRAPHIC CONTRACTS

71.—In all contracts extending over a period of years, and creating a public charge, actual or prospective, entered into by the Government for the conveyance of mails by sea, or for the purpose of telegraphic communications beyond sea, there should be inserted the condition that the contract shall not be binding until it has been approved of by a resolution of the House.

Contracts to be approved by resolution.

72.—Every such contract, when executed, shall forthwith, if Parliament be then sitting, or if Parliament be not then sitting, within fourteen days after it assembles, be laid upon the table of the House, accompanied by a minute of the Lords of the Treasury, setting forth the grounds on which they have proceeded in authorizing it.

Contracts to be laid on table

73.—In cases where any such contract requires to be confirmed by Act of Parliament, the bill for that purpose shall not be introduced and dealt with as a private bill, and power to the Government to enter into agreements by which obligations at the public charge shall be undertaken shall not be given in any private act.

Contracts to be confirmed by public act

### PUBLIC ACCOUNTS

74.—There shall be a committee, to be designated "The Committee of Public Accounts," for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit, to consist of not more than fifteen Members, who shall be nominated at the commencement of every session, and of whom five shall be a quorum. The committee shall have power to send for persons, papers and records, and to report from time to time.

Committee of public accounts

### PUBLIC PETITIONS

75.—Every Member offering to present a petition to the House, not being a petition for a private bill, or relating to a private bill before the House, shall confine himself to a statement of the parties from whom

Presentation of petitions



it comes, of the number of signatures attached to it, and of the material allegations contained in it, and to the reading of the prayer of such petition.

No debate on presentation  
 76.—Every such petition not containing matter in breach of the privileges of this House, and which, according to the rules or usual practice of this House, can be received, shall be brought to the table by the direction of Mr. Speaker, who shall not allow any debate, or any Member to speak upon, or in relation to such petition; but it may be read by the clerk at the table, if required.

Petition as to present personal grievance  
 77.—In the case of such petition complaining of some present personal grievance, for which there may be an urgent necessity for providing an immediate remedy, the matter contained in such petition may be brought into discussion on the presentation thereof.

Reference of petitions committee on public petitions.  
 78.—All other such petitions, after they shall have been ordered to lie on the table, shall be referred without any question being put to a committee to be designated the Committee on Public Petitions; but if any such petition relate to any matter or subject with respect to which the Member presenting it has given notice of a motion, and the said petition has not been ordered to be printed by the committee, such Member may, after notice given, move that such petition be printed with the votes.

Petitions against imposition of a tax.  
 79.—Subject to the above regulations, petitions against any resolution or bill imposing a tax or duty for the current service of the year shall be henceforth received, and the usage under which the House has refused to entertain such petitions shall be discontinued.

#### DEPUTY SPEAKER AND CHAIRMEN

Deputy Speaker and chairmen.  
 80.—(1) Whenever the House shall be informed by the clerk at the table of the unavoidable absence of Mr. Speaker, the Chairman of Ways and Means shall perform the duties and exercise the authority of Speaker in relation to all proceedings of this House, as Deputy Speaker, until the next meeting of the House, and so on from day to day, on the like information being given to the House, until the House shall otherwise order: provided that if the House shall adjourn for more than twenty-four hours the Deputy Speaker shall continue to perform the duties and exercise the authority of Speaker for twenty-four hours only after such adjournment.

(2) At the commencement of every parliament, or from time to time, as necessity may arise, the House may appoint a Deputy Chairman, who shall be entitled to exercise all the powers vested in the Chairman of Ways and Means, including his powers as Deputy Speaker.

(3) Provided also that the Chairman of Ways and Means or Deputy Chairman do take the chair as Deputy Speaker, when requested so to do by Mr. Speaker, without any formal communication to the House.

(4) Mr. Speaker shall nominate, at the commencement of every session, a chairmen's panel of not less than ten Members to act as temporary chairmen of committees when requested by the Chairman of Ways and Means. From this panel, of whom the Chairman of Ways and Means and the Deputy Chairman shall be *ex officio* members, Mr. Speaker shall appoint the chairman of each standing committee and may change the chairman so appointed from time to time. The chairmen's panel, of whom three shall be a quorum, shall have power to report their resolutions on matters of procedure relating to standing committees from time to time to the House.

#### MEMBERS

Seats not to be taken before prayers.  
 81.—No Member's name shall be affixed to any seat in the House before the hour of prayers; and Mr. Speaker shall give directions to the doorkeepers accordingly.

82.—Any Member having secured a seat at prayers shall be entitled to retain the same until the rising of the House.

Seats secured at prayers.

83.—Members may take and subscribe the oath required by law at any time during the sitting of the House, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of; but no debate or business shall be interrupted for that purpose.

Time for taking the oath.

84.—Every person returned as a Member of this House, who may claim to be a person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath, shall henceforth (notwithstanding so much of the resolution adopted by this House on the 22nd day of June, 1880, as relates to affirmation) be permitted, without question, to make and subscribe a solemn affirmation in the form prescribed by the Parliamentary Oaths Act, 1866, as altered by the Promissory Oaths Act, 1868, subject to any liability by statute.

Affirmation in lieu of oath.

### WITNESSES

85.—Any oath or affirmation taken or made by any witness before the House, or a committee of the whole House, may be administered by the clerk at the table.

Administration of oath in House.

86.—Any oath or affirmation taken or made by any witness before a select committee may be administered by the chairman, or by the clerk attending such committee.

Administration of oath in select committee.

### STRANGERS

87.—The Serjeant at arms attending this House shall, from time to time, take into his custody any stranger whom he may see, or who may be reported to him to be, in any part of the House or gallery appropriated to the Members of this House, and also any stranger who, having been admitted into any other part of the House or gallery, shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the House, or any committee of the whole House, is sitting.

Duties of Serjeant at arms with respect to strangers.

88.—No Member of this House shall presume to bring any stranger into any part of the House or gallery appropriated to the Members of this House while the House, or a committee of the whole House, is sitting.

Places to which strangers are not admitted

89.—If at any sitting of the House, or in committee, any Member shall take notice that strangers are present, Mr. Speaker, or the chairman (as the case may be), shall forthwith put the question, "That strangers be ordered to withdraw," without permitting any debate or amendment: provided that Mr. Speaker, or the chairman, may, whenever he thinks fit, order the withdrawal of strangers from any part of the House. Provided that any order made under this Standing Order shall not apply to Members of the House of Lords.

Withdrawal of strangers from House.

### LETTERS

90.—To prevent the intercepting or losing of letters directed to Members of this House, the postmaster of the House or other persons appointed by the Postmaster-General shall attend daily (Sundays excepted) for the delivery and re-direction of all letters arriving in course of post, and shall take care, during their stay there, to deliver the same to the several Members to whom they shall be directed, or to their known servant or servants, or other persons bringing notes under the hands of the Members sending for the same.

Custody of letters addressed to Members.

91.—The said officers shall, upon their going away, look up such letters as shall remain undelivered.

Directions to officers in charge of letters.

Mode of  
dealing  
with letters  
directed to  
House

92.—When any letter or packet directed to this House shall come to Mr. Speaker, he shall open the same ; and acquaint the House, at its next sitting, with the contents thereof, if proper to be communicated to this House.

#### PARLIAMENTARY PAPERS

Presenta-  
tion of  
command  
papers

93.—If, during the existence of a Parliament, papers are commanded to be presented to this House by his Majesty at any time, the delivery of such papers to the librarian of the House of Commons shall be deemed to be for all purposes the presentation of them to this House.

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